

1 STATE OF OKLAHOMA

2 1st Session of the 60th Legislature (2025)

3 SENATE BILL 789

By: Gollihare

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6 AS INTRODUCED

7 An Act relating to pharmacy benefit managers;
8 amending 59 O.S. 2021, Sections 356.2, as amended by
9 Section 2, Chapter 332, O.S.L. 2024, 357, as amended
10 by Section 4, Chapter 332, O.S.L. 2024, and 360, as
11 amended by Section 6, Chapter 332, O.S.L. 2024 (59
12 O.S. Supp. 2024, Sections 356.2, 357, and 360), which
13 relate to pharmacy audit requirements, definitions,
14 and contractual duties to provider; permitting use of
15 certain records without limitations of date or source
16 for certain purposes; modifying definitions; updating
17 statutory language; prohibiting certain network
18 sharing; establishing certain reimbursement rates for
19 certain drugs; providing for fee increase;
20 prohibiting certain contracts between certain
21 parties; establishing penalties; disallowing
22 contracts from violating certain provisions; and
23 providing an effective date.

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

29 SECTION 1. AMENDATORY 59 O.S. 2021, Section 356.2, as
30 amended by Section 2, Chapter 332, O.S.L. 2024 (59 O.S. Supp. 2024,
31 Section 356.2), is amended to read as follows:

32 Section 356.2. A. The entity conducting an audit of a pharmacy
33 shall:

1 1. Identify and specifically describe the audit and appeal
2 procedures in the pharmacy contract. Prescription claim
3 documentation and record-keeping requirements shall not exceed the
4 requirements set forth by the Oklahoma Pharmacy Act or other
5 applicable state or federal laws or regulations;

6 2. Give the pharmacy written notice by certified letter to the
7 pharmacy and the pharmacy's contracting agent, including
8 identification of specific prescription numbers and fill dates to be
9 audited, at least fourteen (14) calendar days prior to conducting
10 the audit, including, but not limited to, an on-site audit, a desk
11 audit, or a wholesale purchase audit, request for documentation
12 related to the dispensing of a prescription drug or any reimbursed
13 activity by a pharmacy provider; provided, however, that wholesale
14 purchase audits shall require a minimum of thirty (30) calendar
15 days' written notice. For an on-site audit, the audit date shall be
16 the date the on-site audit occurs. For all other audit types, the
17 audit date shall be the date the pharmacy provides the documentation
18 requested in the audit notice. The pharmacy shall have the
19 opportunity to reschedule the audit no more than seven (7) calendar
20 days from the date designated on the original audit notification;

21 3. Not interfere with the delivery of pharmacist services to a
22 patient and shall utilize every reasonable effort to minimize
23 inconvenience and disruption to pharmacy operations during the audit
24 process;

1 4. Conduct any audit involving clinical or professional
2 judgment by means of or in consultation with a licensed pharmacist;

3 5. Not consider as fraud any clerical or record-keeping error,
4 such as a typographical error, scrivener's error or computer error,
5 including, but not limited to, a miscalculated day supply,
6 incorrectly billed prescription written date or prescription origin
7 code, and such errors shall not be subject to recoupment. The
8 pharmacy shall have the right to submit amended claims
9 electronically to correct clerical or record-keeping errors in lieu
10 of recoupment. To the extent that an audit results in the
11 identification of any clerical or record-keeping errors such as
12 typographical errors, scrivener's errors or computer errors in a
13 required document or record, the pharmacy shall not be subject to
14 recoupment of funds by the pharmacy benefits manager unless the
15 pharmacy benefits manager can provide proof of intent to commit
16 fraud. A person shall not be subject to criminal penalties for
17 errors provided for in this paragraph without proof of intent to
18 commit fraud;

19 6. Permit a pharmacy to use the records of a hospital,
20 physician, or other authorized practitioner of the healing arts for
21 drugs or medicinal supplies written or transmitted by any means of
22 communication for purposes of validating the pharmacy record with
23 respect to orders or refills of a legend or narcotic drug;

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1 7. Permit a pharmacy to use drug purchase records without
2 limitation of date or source to validate the dispensing of a
3 prescription drug or a controlled dangerous substance, provided the
4 drug purchase was done in accordance with state or federal law;

5 8. Not include the dispensing fee amount or the actual invoice
6 cost of the prescription dispensed in a finding of an audit
7 recoupment unless a prescription was not actually dispensed or a
8 physician denied authorization of a dispensing order;

9 ~~8.~~ 9. Audit each pharmacy under identical standards, regularity
10 and parameters as other similarly situated pharmacies and all
11 pharmacies owned or managed by the pharmacy benefits manager
12 conducting or having conducted the audit;

13 ~~9.~~ 10. Not exceed one (1) year from the date the claim was
14 submitted to or adjudicated by a managed care company, nonprofit
15 hospital or medical service organization, insurance company, third-
16 party payor, pharmacy benefits manager, a health program
17 administered by a department of this state, or any entity that
18 represents the companies, groups, or departments for the period
19 covered by an audit;

20 ~~10.~~ 11. Not schedule or initiate an audit during the first
21 seven (7) calendar days of any month unless otherwise consented to
22 by the pharmacy;

23 ~~11.~~ 12. Disclose to any plan sponsor whose claims were included
24 in the audit any money recouped in the audit;

1 ~~12.~~ 13. Not require pharmacists to break open packaging labeled
2 "for single-patient-use only". Packaging labeled "for single-
3 patient-use only" shall be deemed to be the smallest package size
4 available; and

5 ~~13.~~ 14. Upon recoupment of funds from a pharmacy, refund first
6 to the patient the portion of the recovered funds that were
7 originally paid by the patient, provided such funds were part of the
8 recoupment.

9 B. 1. Any entity that conducts wholesale purchase review
10 during an audit of a pharmacist or pharmacy shall not require the
11 pharmacist or pharmacy to provide a full dispensing report.

12 Wholesaler invoice reviews shall be limited to verification of
13 purchase inventory specific to the pharmacy claims paid by the
14 health benefits plan or pharmacy benefits manager conducting the
15 audit without limitation to date or source of purchase.

16 2. Any entity conducting an audit shall not identify or label a
17 prescription claim as an audit discrepancy when:

18 a. the National Drug Code for the dispensed drug is in a
19 quantity that is a subunit or multiple of the drug
20 purchased by the pharmacist or pharmacy as supported
21 by a wholesale invoice,

22 b. the pharmacist or pharmacy dispensed the correct
23 quantity of the drug according to the prescription,
24 and

1 c. the drug dispensed by the pharmacist or pharmacy
2 shares all but the last two digits of the National
3 Drug Code of the drug reflected on the supplier
4 invoice.

5 3. An entity conducting an audit shall accept as evidence,
6 without limitation on date or source of purchase subject to
7 validation, to support the validity of a pharmacy claim related to a
8 dispensed drug:

- 9 a. redacted copies of supplier invoices in the
10 pharmacist's or pharmacy's possession, or
11 b. invoices and any supporting documents from any
12 supplier as authorized by federal or state law to
13 transfer ownership of the drug acquired by the
14 pharmacist or pharmacy.

15 4. An entity conducting an audit shall provide, no later than
16 five (5) calendar days after the date of a request by the pharmacist
17 or pharmacy, all supporting documents the pharmacist's or pharmacy's
18 purchase suppliers provided to the health benefits plan issuer or
19 pharmacy benefits manager.

20 C. A pharmacy shall be allowed to provide the pharmacy's
21 computerized patterned medical records or the records of a hospital,
22 physician, or other authorized practitioner of the healing arts for
23 drugs or medicinal supplies written or transmitted by any means of
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1 communication for purposes of supporting the pharmacy record with
2 respect to orders or refills of a legend or narcotic drug.

3 D. The entity conducting the audit shall not audit more than
4 fifty prescriptions, with specific date of service, per calendar
5 year. The annual limit to the number of prescription claims audited
6 shall be inclusive of all audits, including any prescription-related
7 documentation requests from the health insurer, pharmacy benefits
8 manager or any third-party company conducting audits on behalf of
9 any health insurer or pharmacy benefits manager during a calendar
10 year.

11 E. If paper copies of records are requested by the entity
12 conducting the audit, the entity shall pay twenty-five cents (\$0.25)
13 per page to cover the costs incurred by the pharmacy. The entity
14 conducting the audit shall provide the pharmacy with accurate
15 instructions, including any required form for obtaining
16 reimbursement for the copied records.

17 F. The entity conducting the audit shall:

18 1. Deliver a preliminary audit findings report to the pharmacy
19 and the pharmacy's contracting agent within forty-five (45) calendar
20 days of conducting the audit;

21 2. Allow the pharmacy at least ninety (90) calendar days
22 following receipt of the preliminary audit findings report in which
23 to produce documentation to address any discrepancy found during the
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1 audit; provided, however, a pharmacy may request an extension, not
2 to exceed an additional forty-five (45) calendar days;

3 3. Deliver a final audit findings report to the pharmacy and
4 the pharmacy's contracting agent signed by the auditor within ten
5 (10) calendar days after receipt of additional documentation
6 provided by the pharmacy, as provided for in Section 356.3 of this
7 title;

8 4. Allow the pharmacy to reverse and resubmit claims
9 electronically within thirty (30) calendar days of receipt of the
10 final audit report in lieu of the auditing entity recouping
11 discrepant claim amounts from the pharmacy;

12 5. Not recoup any disputed funds until after final disposition
13 of the audit findings, including the appeals process as provided for
14 in Section 356.3 of this title; and

15 6. Not accrue interest during the audit and appeal period.

16 G. Each entity conducting an audit shall provide a copy of the
17 final audit results, and a final audit report upon request, after
18 completion of any review process to the plan sponsor.

19 H. 1. The full amount of any recoupment on an audit shall be
20 refunded to the plan sponsor. Except as provided for in paragraph 2
21 of this subsection, a charge or assessment for an audit shall not be
22 based, directly or indirectly, on amounts recouped.

23 2. This subsection does not prevent the entity conducting the
24 audit from charging or assessing the responsible party, directly or
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1 indirectly, based on amounts recouped if both of the following
2 conditions are met:

- 3 a. the plan sponsor and the entity conducting the audit
4 have a contract that explicitly states the percentage
5 charge or assessment to the plan sponsor, and
- 6 b. a commission to an agent or employee of the entity
7 conducting the audit is not based, directly or
8 indirectly, on amounts recouped.

9 I. Unless superseded by state or federal law, auditors shall
10 only have access to previous audit reports on a particular pharmacy
11 conducted by the auditing entity for the same pharmacy benefits
12 manager, health plan or insurer. An auditing vendor contracting
13 with multiple pharmacy benefits managers or health insurance plans
14 shall not use audit reports or other information gained from an
15 audit on a pharmacy to conduct another audit for a different
16 pharmacy benefits manager or health insurance plan.

17 ~~J. Sections A through I of this section shall not apply to any~~
18 ~~audit initiated based on or that involves fraud, willful~~
19 ~~misrepresentation, or abuse.~~

20 ~~K.~~ If the Attorney General, after notice and opportunity for
21 hearing, finds that the entity conducting the audit failed to follow
22 any of the requirements pursuant to the Pharmacy Audit Integrity
23 Act, the audit shall be considered null and void. Any monies
24 recouped from a null and void audit shall be returned to the

1 affected pharmacy within fourteen (14) calendar days. Any violation
2 of this section by a pharmacy benefits manager or auditing entity
3 shall be deemed a violation of the Pharmacy Audit Integrity Act.

4 SECTION 2. AMENDATORY 59 O.S. 2021, Section 357, as
5 amended by Section 4, Chapter 332, O.S.L. 2024 (59 O.S. Supp. 2024,
6 Section 357), is amended to read as follows:

7 Section 357. A. As used in Sections 357 through 360 of this
8 title:

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

20 2. "Covered individual" means a member, participant, enrollee,
21 contract holder or policy holder or beneficiary of a covered entity
22 who is provided health coverage by the covered entity. A covered
23 individual includes any dependent or other person provided health
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1 coverage through a policy, contract or plan for a covered
2 individual;

3 3. "Department" means the Insurance Department;

4 4. "Effective rate contracting" means any agreement or
5 arrangement between a pharmacy or contracting agent acting on behalf
6 of a pharmacy and a pharmacy benefits manager for pharmaceuticals
7 based on the effective rate of payment rather than a predetermined
8 fixed price or fixed discount percentage;

9 5. "Maximum allowable cost", "MAC", or "MAC list" means the
10 list of drug products delineating the maximum per-unit reimbursement
11 for multiple-source prescription drugs, medical product, or device;

12 ~~5.~~ 6. "Multisource drug product reimbursement" (reimbursement)
13 means the total amount paid to a pharmacy inclusive of any reduction
14 in payment to the pharmacy, excluding prescription dispense fees and
15 professional fees;

16 ~~6.~~ 7. "Office" means the Office of the Attorney General;

17 ~~7.~~ 8. "Pharmacy benefits management" means a service provided
18 to covered entities to facilitate the provision of prescription drug
19 benefits to covered individuals within the state, including
20 negotiating pricing and other terms with drug manufacturers and
21 providers. Pharmacy benefits management may include any or all of
22 the following services:
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- a. claims processing, retail network management and payment of claims to pharmacies for prescription drugs dispensed to covered individuals,
- b. clinical formulary development and management services, or
- c. rebate contracting and administration;

~~8.~~ 9. "Pharmacy benefits manager" or "PBM" means a person, business, or other entity that performs pharmacy benefits management. The term shall include a person or entity acting on behalf of a PBM in a contractual or employment relationship in the performance of pharmacy benefits management for a managed care company, nonprofit hospital, medical service organization, insurance company, third-party payor, or a health program administered by an agency or department of this state;

~~9.~~ 10. "Plan sponsor" means the employers, insurance companies, unions and health maintenance organizations or any other entity responsible for establishing, maintaining, or administering a health benefit plan on behalf of covered individuals; and

~~10.~~ 11. "Provider" means a pharmacy licensed by the State Board of Pharmacy, or an agent or representative of a pharmacy, including, but not limited to, the pharmacy's contracting agent, which dispenses prescription drugs or devices to covered individuals.

B. Nothing in the definition of pharmacy benefits management or pharmacy benefits manager in the Patient's Right to Pharmacy Choice

1 Act, Pharmacy Audit Integrity Act, or Sections 357 through 360 of
2 this title shall deem an employer a "pharmacy benefits manager" of
3 its own self-funded health benefit plan, except, to the extent
4 permitted by applicable law, where the employer, without the
5 utilization of a third party and unrelated to the employer's own
6 pharmacy:

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

10 SECTION 3. AMENDATORY 59 O.S. 2021, Section 360, as
11 amended by Section 6, Chapter 332, O.S.L. 2024 (59 O.S. Supp. 2024,
12 Section 360), is amended to read as follows:

13 Section 360. A. The pharmacy benefits manager shall, with
14 respect to contracts between a pharmacy benefits manager and a
15 provider, including a pharmacy service administrative organization:

16 1. Include in such contracts the specific sources utilized to
17 determine the maximum allowable cost (MAC) pricing of the pharmacy,
18 update MAC pricing at least every seven (7) calendar days, and
19 establish a process for providers to readily access the MAC list
20 specific to that provider;

21 2. In order to place a drug on the MAC list, ensure that the
22 drug is listed as "A" or "B" rated in the most recent version of the
23 FDA's Approved Drug Products with Therapeutic Equivalence
24 Evaluations, also known as the Orange Book, and the drug is

1 generally available for purchase by pharmacies in the state from
2 national or regional wholesalers and is not obsolete;

3 3. Ensure dispensing fees are not included in the calculation
4 of MAC price reimbursement to pharmacy providers;

5 4. Provide a reasonable administration appeals procedure to
6 allow a provider, a provider's representative and a pharmacy service
7 administrative organization to contest reimbursement amounts within
8 fourteen (14) calendar days of the final adjusted payment date. The
9 pharmacy benefits manager shall not prevent the pharmacy or the
10 pharmacy service administrative organization from filing
11 reimbursement appeals in an electronic batch format. The pharmacy
12 benefits manager must respond to a provider, a provider's
13 representative and a pharmacy service administrative organization
14 who have contested a reimbursement amount through this procedure
15 within ten (10) calendar days. The pharmacy benefits manager must
16 respond in an electronic batch format to reimbursement appeals filed
17 in an electronic batch format. The pharmacy benefits manager shall
18 not require a pharmacy or pharmacy services administrative
19 organization to log into a system to upload individual claim appeals
20 or to download individual appeal responses. If a price update is
21 warranted, the pharmacy benefits manager shall make the change in
22 the reimbursement amount, permit the dispensing pharmacy to reverse
23 and rebill the claim in question, and make the reimbursement amount
24 change retroactive and effective for all contracted providers; and

1 5. If a below-cost reimbursement appeal is denied, the PBM
2 shall provide the reason for the denial, including the National Drug
3 Code (NDC) number from, and the name of, the specific national or
4 regional wholesalers doing business in this state where the drug is
5 currently in stock and available for purchase by the dispensing
6 pharmacy at a price below the PBM's reimbursement price. If the NDC
7 number provided by the pharmacy benefits manager is not available
8 below the acquisition cost obtained from the pharmaceutical
9 wholesaler from whom the dispensing pharmacy purchases the majority
10 of the prescription drugs that are dispensed, the pharmacy benefits
11 manager shall immediately adjust the reimbursement amount, permit
12 the dispensing pharmacy to reverse and rebill the claim in question,
13 and make the reimbursement amount adjustment retroactive and
14 effective in effect for all contracted providers for future claims
15 billed.

16 B. The reimbursement appeal requirements in this section shall
17 apply to all drugs, medical products, or devices reimbursed
18 according to any payment methodology, including, but not limited to:

- 19 1. Average acquisition cost, including the National Average
20 Drug Acquisition Cost;
- 21 2. Average manufacturer price;
- 22 3. Average wholesale price;
- 23 4. Brand effective rate or generic effective rate;
- 24 5. Discount indexing;

1 6. Federal upper limits;

2 7. Wholesale acquisition cost; and

3 8. Any other term that a pharmacy benefits manager or an
4 insurer of a health benefit plan may use to establish reimbursement
5 rates to a pharmacist or pharmacy for pharmacist services.

6 C. The pharmacy benefits manager shall not place a drug on a
7 MAC list, unless there are at least two therapeutically equivalent,
8 multiple-source drugs, generally available for purchase by
9 dispensing retail pharmacies from national or regional wholesalers.

10 D. In the event that a drug is placed on the FDA Drug Shortages
11 Database, pharmacy benefits managers shall reimburse claims to
12 pharmacies at no less than the wholesale acquisition cost for the
13 specific NDC number being dispensed.

14 E. The pharmacy benefits manager shall not require
15 accreditation or licensing of providers, or any entity licensed or
16 regulated by the State Board of Pharmacy, other than by the State
17 Board of Pharmacy or federal government entity as a condition for
18 participation as a network provider.

19 F. A pharmacy or pharmacist may decline to provide the
20 pharmacist clinical or dispensing services to a patient or pharmacy
21 benefits manager if the pharmacy or pharmacist is to be paid less
22 than the pharmacy's cost for providing the pharmacist clinical or
23 dispensing services.

1 G. The pharmacy benefits manager shall provide a dedicated
2 telephone number, email address and names of the personnel with
3 decision-making authority regarding MAC appeals and pricing.

4 H. No pharmacy benefits manager (PBM) shall lease, rent, or
5 otherwise make its provider network available to another pharmacy
6 benefits manager. Prohibited activities shall include, but not be
7 limited to:

8 1. Entering into agreements or contracts that allow another PBM
9 to use the provider network; and

10 2. Facilitating access to the provider network through any form
11 of leasing or renting arrangement.

12 I. The PBM shall, with respect to contracts between a PBM and a
13 provider, including contracts with pharmacy service administrative
14 organization, ensure that reimbursement to pharmacies for each drug
15 dispensed is no less than one hundred six percent (106%) of the
16 National Average Drug Acquisition Cost (NADAC) plus a professional
17 fee of Fifteen Dollars (\$15.00). The NADAC price shall be the price
18 published in effect for the date the drug claim was billed by the
19 pharmacy. If a particular drug does not have a published NADAC
20 price, the reimbursement shall be one hundred ten percent (110%) of
21 the wholesale acquisition cost (WAC) plus a professional fee of
22 Fifteen Dollars (\$15.00) for generic drugs and one hundred (100%)
23 percent of the WAC plus a professional fee of Fifteen Dollars
24 (\$15.00) for brand-name drugs. The professional fee shall

1 automatically increase on January 1 of each year at a percentage
2 equal to the inflation rate measured by the Consumer Price Index for
3 the previous twelve-month period.

4 J. 1. Effective rate contracting is hereby prohibited in all
5 agreements between pharmacies or contracting agents acting on behalf
6 of a pharmacy and a PBM or third-party payers. No PBM or third-
7 party payer shall enter into any contract that establishes payment
8 for services or medications based on an effective rate of
9 reimbursement.

10 2. Any PBM or third-party payer found to be in violation of
11 this section shall be subject to penalties, including, but not
12 limited to, fines, revocation of licensure, or other disciplinary
13 actions.

14 K. The provisions of this section shall not be waived, voided,
15 or nullified by contract.

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

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