

1 ENGROSSED SENATE  
2 BILL NO. 1860

By: McCortney, Taylor, Bullard,  
Burns, Garvin, Stanley,  
Pemberton, Standridge,  
Stephens, Rader, Coleman,  
Pederson, Simpson, Kidd,  
Murdock, Jech, Leewright,  
and Rogers of the Senate

and

McEntire, Olsen, Hasenbeck,  
and Pae of the House

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9 An Act relating to the Patient's Right to Pharmacy  
10 Choice Act; amending 36 O.S. 2021, Sections 6960,  
11 6961, 6962, and 6963, which relate to definitions,  
12 retail pharmacy network access standards, compliance  
13 review, and health insurer monitoring; defining  
14 terms; modifying definition; expanding retail  
15 pharmacy network access standards; prohibiting  
16 pharmacy benefits managers from requiring patient use  
17 affiliated pharmacy; providing for expansion of  
18 pharmacy network participation; prohibiting provider  
19 contracts from limiting the ability of a pharmacy to  
disclose certain health care and cost information;  
providing health insurers performing pharmacy  
benefits management activities be responsible for  
certain conduct; modifying patient choices of in-  
network pharmacy; providing that pharmacy benefits  
managers not require or incentivize individuals  
through certain means; construing provision;  
repealing 36 O.S. 2021, Section 6964, which relates  
to Pharmacy and Therapeutics Committees; updating  
statutory reference; and providing an effective date.

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

22 SECTION 1. AMENDATORY 36 O.S. 2021, Section 6960, is  
23 amended to read as follows:  
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1 Section 6960. For purposes of the Patient's Right to Pharmacy  
2 Choice Act:

3 1. "Health insurer" means any corporation, association, benefit  
4 society, exchange, partnership or individual licensed by the  
5 Oklahoma Insurance Code;

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

9 3. "Pharmacy benefits management" means any or all of the  
10 following activities:

11 a. provider contract negotiation and/or provider network  
12 administration including decisions related to provider  
13 network participation status,

14 b. drug rebate contract negotiation or drug rebate  
15 administration, and

16 c. claims processing which may include claim billing and  
17 payment services;

18 4. "Pharmacy benefits manager" or "PBM" means a person or  
19 entity that performs pharmacy benefits management activities and any  
20 other person or entity acting for ~~such~~ a person or entity performing  
21 pharmacy benefits management activities. ~~under a contractual or~~  
22 ~~employment relationship in the performance of pharmacy benefits~~  
23 ~~management for a managed-care company, nonprofit hospital, medical~~  
24 ~~service organization, insurance company, third party payor or a~~

1 ~~health program administered by a department of this state~~  
2 Notwithstanding any other provision within the Patient's Right to  
3 Pharmacy Choice Act, a self-funded plan administered by an employer  
4 or organized labor union who negotiates and executes all provider  
5 contracts directly with a pharmacy or the pharmacy's contracted  
6 pharmacy services administrative organization, and a pharmacy  
7 provider who does not use a pharmacy services administrative  
8 organization shall not be deemed a pharmacy benefits manager of its  
9 own group health plan and shall not be restricted in its ability to  
10 design and manage its own group health plan;

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

14 5. "Retail pharmacy" or "provider" means a pharmacy, as defined  
15 in Section 353.1 of Title 59 of the Oklahoma Statutes, licensed by  
16 the State Board of Pharmacy or an agent or representative of a  
17 pharmacy;

18 ~~5.~~ 6. "Retail pharmacy network" means retail pharmacy providers  
19 contracted with a PBM in which the pharmacy primarily fills and  
20 sells prescriptions via a retail, storefront location;

21 ~~6.~~ 7. "Rural service area" means a five-digit ZIP code in which  
22 the population density is less than one thousand (1,000) individuals  
23 per square mile;

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1        8. "Specialty drug" means prescription medication that requires  
2 special handling, administration, or monitoring and is used for the  
3 treatment of patients with serious health conditions requiring  
4 complex therapies. Specialty drugs shall also include drugs that  
5 are limited in distribution by the manufacturer and may be purchased  
6 only at specialty pharmacies;

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

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

13        SECTION 2.        AMENDATORY        36 O.S. 2021, Section 6961, is  
14 amended to read as follows:

15        Section 6961. A. Pharmacy benefits managers (PBMs) shall  
16 comply with the following retail pharmacy network access standards:

17        1. At least ninety percent (90%) of covered individuals  
18 residing in ~~an~~ each urban service area live within two (2) miles of  
19 a retail pharmacy participating in the PBM's retail pharmacy  
20 network;

21        2. At least ninety percent (90%) of covered individuals  
22 residing in ~~an~~ each urban service area live within five (5) miles of  
23 a retail pharmacy designated as a preferred participating pharmacy  
24 in the PBM's retail pharmacy network;

1           3. At least ninety percent (90%) of covered individuals  
2 residing in a each suburban service area live within five (5) miles  
3 of a retail pharmacy participating in the PBM's retail pharmacy  
4 network;

5           4. At least ninety percent (90%) of covered individuals  
6 residing in a each suburban service area live within seven (7) miles  
7 of a retail pharmacy designated as a preferred participating  
8 pharmacy in the PBM's retail pharmacy network;

9           5. At least seventy percent (70%) of covered individuals  
10 residing in a each rural service area live within fifteen (15) miles  
11 of a retail pharmacy participating in the PBM's retail pharmacy  
12 network; and

13           6. At least seventy percent (70%) of covered individuals  
14 residing in a each rural service area live within eighteen (18)  
15 miles of a retail pharmacy designated as a preferred participating  
16 pharmacy in the PBM's retail pharmacy network.

17           B. Mail-order pharmacies shall not be used to meet access  
18 standards for retail pharmacy networks.

19           C. Pharmacy benefits managers shall not require patients to use  
20 pharmacies that are directly or indirectly owned by ~~the~~ or  
21 affiliated with a pharmacy benefits manager, including all regular  
22 prescriptions, refills or specialty drugs regardless of day supply.

23           D. Pharmacy benefits managers shall not in any manner on any  
24 material, including but not limited to mail and ID cards, include

1 the name of any pharmacy, hospital or other providers unless it  
2 specifically lists all pharmacies, hospitals and providers  
3 participating in the preferred and nonpreferred pharmacy and health  
4 networks.

5 SECTION 3. AMENDATORY 36 O.S. 2021, Section 6962, is  
6 amended to read as follows:

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

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

12 1. Cause or knowingly permit the use of advertisement,  
13 promotion, solicitation, representation, proposal or offer that is  
14 untrue, deceptive or misleading;

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

- 17 a. the submission of a claim,  
18 b. enrollment or participation in a retail pharmacy  
19 network, or  
20 c. the development or management of claims processing  
21 services or claims payment services related to  
22 participation in a retail pharmacy network;

23 3. Reimburse a pharmacy or pharmacist in the state an amount  
24 less than the amount that the PBM reimburses a pharmacy owned by or

1 under common ownership with a PBM for providing the same covered  
2 services. The reimbursement amount paid to the pharmacy shall be  
3 equal to the reimbursement amount calculated on a per-unit basis  
4 using the same generic product identifier or generic code number  
5 paid to the PBM-owned or PBM-affiliated pharmacy;

6 4. Deny a pharmacy the opportunity to participate in any form  
7 of pharmacy network at preferred participation status, whether in-  
8 network, preferred, or otherwise, if the pharmacy is willing to  
9 accept the terms and conditions that the PBM has established for  
10 other pharmacies as a condition ~~of preferred network~~ for  
11 participation status in the network or networks of the pharmacy's  
12 choice;

13 5. Deny, limit or terminate a pharmacy'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;  
24 or

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 pharmacy or pharmacist from a pharmacy benefits manager network.

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

7 1. A ~~PBM~~ provider contract shall not prohibit, restrict, or  
8 penalize a pharmacy or pharmacist in any way for disclosing to an  
9 individual any health care information that the pharmacy or  
10 pharmacist deems appropriate regarding:

11 a. ~~not restrict, directly or indirectly, any pharmacy~~  
12 ~~that dispenses a prescription drug from informing, or~~  
13 ~~penalize such pharmacy for informing, an individual of~~  
14 ~~any differential between the individual's out-of-~~  
15 ~~pocket cost or coverage with respect to acquisition of~~  
16 ~~the drug and the amount an individual would pay to~~  
17 ~~purchase the drug directly~~ the nature of treatment,  
18 risks, or alternatives to the prescription drug being  
19 dispensed, and

20 b. ~~ensure that any entity that provides pharmacy benefits~~  
21 ~~management services under a contract with any such~~  
22 ~~health plan or health insurance coverage does not,~~  
23 ~~with respect to such plan or coverage, restrict,~~  
24 ~~directly or indirectly, a pharmacy that dispenses a~~

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

10 c. the decision of utilization reviewers or similar  
11 persons to authorize or deny services, and

12 d. the process that is used to authorize or deny  
13 healthcare services and structures used by the health  
14 insurer.

15 2. Provider contracts shall not prohibit a pharmacy or  
16 pharmacist from discussing information regarding the total cost of  
17 pharmacist services for a prescription drug or from selling a more  
18 affordable alternative to the covered person if such alternative is  
19 available.

20 ~~A pharmacy benefits manager's contract with a participating~~  
21 ~~pharmacist or pharmacy~~ 3. Provider contracts shall not prohibit,  
22 restrict or limit disclosure of information to the Insurance  
23 Commissioner, law enforcement or state and federal governmental  
24 officials investigating or examining a complaint or conducting a

1 review of a pharmacy benefits manager's compliance with the  
2 requirements under the Patient's Right to Pharmacy Choice Act.

3 ~~3.~~ 4. A pharmacy benefits manager shall establish and maintain  
4 an electronic claim inquiry processing system using the National  
5 Council for Prescription Drug Programs' current standards to  
6 communicate information to pharmacies submitting claim inquiries.

7 SECTION 4. AMENDATORY 36 O.S. 2021, Section 6963, is  
8 amended to read as follows:

9 Section 6963. A. A health insurer shall be responsible for  
10 monitoring all activities carried out by, or on behalf of, the  
11 health insurer under the Patient's Right to Pharmacy Choice Act, and  
12 for ensuring that all requirements of ~~this act~~ Section 6958 et seq.  
13 of this title are met.

14 B. Whenever a health insurer performs pharmacy benefits  
15 management on its own behalf or contracts with another person or  
16 entity to perform ~~activities required under this act~~ pharmacy  
17 benefits management, the health insurer shall be responsible for  
18 monitoring the activities and conduct of that person or entity with  
19 whom the health insurer contracts and for ensuring that the  
20 requirements of ~~this act~~ Section 6958 et seq. of this title are met.

21 C. An individual may be notified at the point of sale when the  
22 cash price for the purchase of a prescription drug is less than the  
23 individual's copayment or coinsurance price for the purchase of the  
24 same prescription drug.

1 D. A health insurer or pharmacy benefits manager (PBM) shall  
2 not restrict an individual's choice of in-network provider for  
3 prescription drugs.

4 E. 1. An individual's A patient's choice of in-network  
5 provider may include ~~a retail~~ an in-network pharmacy ~~or a~~, whether  
6 that pharmacy is in a preferred or nonpreferred network, a retailer  
7 pharmacy, mail-order pharmacy, or any other pharmacy. A health  
8 insurer or PBM shall not restrict ~~such a patient's~~ choice of in-  
9 network pharmacy providers. ~~Such~~ A health insurer or PBM shall not  
10 require or incentivize using individuals by:

11 a. using any discounts in cost-sharing or a reduction in  
12 copay, or the number of copays, or any other patient-  
13 copay equivalent to individuals to receive  
14 prescription drugs from an individual's choice of in-  
15 network pharmacy, or

16 b. using financial incentives to differentiate between  
17 in-network pharmacies, whether that pharmacy is in a  
18 preferred or nonpreferred network, a retail pharmacy,  
19 mail order pharmacy, or any other type of pharmacy.

20 2. Nothing in this subsection shall be construed to prohibit a  
21 person or entity participating in pharmacy benefits management  
22 activities from directing a patient to use a specific pharmacy for  
23 the purchase of a specialty drug as defined in paragraph 8 of  
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