

FLOOR AMENDMENT
HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend SB1860 _____
Of the printed Bill
Page _____ Section _____ Lines _____
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Adopted: _____

Amendment submitted by: Garry Mize

Reading Clerk

1 STATE OF OKLAHOMA

2 2nd Session of the 58th Legislature (2022)

3 FLOOR SUBSTITUTE
4 FOR ENGROSSED

5 SENATE BILL NO. 1860

6 By: McCortney, Taylor, Bullard,
7 Burns, Garvin, Stanley,
8 Pemberton, Standridge,
9 Stephens, Rader, Coleman,
10 Pederson, Simpson, Kidd,
11 Murdock, Jech, Leewright,
12 and Rogers of the Senate

13 and

14 McEntire, Olsen, Hasenbeck,
15 Pae, and Grego of the House

16 FLOOR SUBSTITUTE

17 An Act relating to the Patient's Right to Pharmacy
18 Choice Act; amending 36 O.S. 2021, Sections 6960,
19 6961, 6962, and 6963, which relate to definitions,
20 retail pharmacy network access standards, compliance
21 review, and health insurer monitoring; defining
22 terms; modifying definition; expanding retail
23 pharmacy network access standards; prohibiting
24 pharmacy benefits managers from requiring patient use
affiliated pharmacy; providing for expansion of
pharmacy network participation; prohibiting provider
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.

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

2 SECTION 1. AMENDATORY 36 O.S. 2021, Section 6960, is
3 amended to read as follows:

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

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

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

12 3. "Pharmacy benefits management" means any or all of the
13 following activities:

14 a. provider contract negotiation and/or provider network
15 administration including decisions related to provider
16 network participation status,

17 b. drug rebate contract negotiation or drug rebate
18 administration, and

19 c. claims processing which may include claim billing and
20 payment services;

21 4. "Pharmacy benefits manager" or "PBM" means a person or
22 entity that performs pharmacy benefits management activities and any
23 other person or entity acting for ~~such a person under a contractual~~
24 ~~or employment relationship in the performance of pharmacy benefits~~

1 ~~management for a managed care company, nonprofit hospital, medical~~
2 ~~service organization, insurance company, third party payor or a~~
3 ~~health program administered by a department of this state or entity~~
4 performing pharmacy benefits management activities. Notwithstanding
5 any other provision within the Patient's Right to Pharmacy Choice
6 Act, a self-funded plan administered by an employer or organized
7 labor union who negotiates and executes all provider contracts
8 directly with a pharmacy or the pharmacy's contracted pharmacy
9 services administrative organization, and a pharmacy provider who
10 does not use a pharmacy services administrative organization shall
11 not be deemed a pharmacy benefits manager of its own group health
12 plan and shall not be restricted in its ability to design and manage
13 its own group health plan;

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

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

21 ~~5.~~ 6. "Retail pharmacy network" means retail pharmacy providers
22 contracted with a PBM in which the pharmacy primarily fills and
23 sells prescriptions via a retail, storefront location;

24

1 ~~6.~~ 7. "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 8. "Specialty drug" means prescription medication that requires
5 special handling, administration, or monitoring and is used for the
6 treatment of patients with serious health conditions requiring
7 complex therapies. Specialty drugs shall also include drugs that
8 are limited in distribution by the manufacturer and may be purchased
9 only at specialty pharmacies;

10 ~~7.~~ 9. "Suburban service area" means a five-digit ZIP code in
11 which the population density is between one thousand (1,000) and
12 three thousand (3,000) individuals per square mile; and

13 ~~8.~~ 10. "Urban service area" means a five-digit ZIP code in
14 which the population density is greater than three thousand (3,000)
15 individuals per square mile.

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

18 Section 6961. A. Pharmacy benefits managers (PBMs) and
19 pharmacy services administrative organizations (PSAOs) shall comply
20 with the following retail pharmacy network access standards:

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

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

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

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

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

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

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

23 C. Pharmacy benefits managers and pharmacy services
24 administrative organizations shall not require patients to use

1 pharmacies that are directly or indirectly owned by ~~the~~ or
2 affiliated with a pharmacy benefits manager, including all regular
3 prescriptions, refills or specialty drugs regardless of day supply.

4 D. Pharmacy benefits managers and pharmacy services
5 administrative organizations shall not in any manner on any
6 material, including, but not limited to, mail and ID cards, include
7 the name of any pharmacy, hospital or other providers unless it
8 specifically lists all pharmacies, hospitals and providers
9 participating in the preferred and nonpreferred pharmacy and health
10 networks.

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

13 Section 6962. A. The ~~Oklahoma~~ Insurance Department shall
14 review and approve retail pharmacy network access for all pharmacy
15 benefits managers (PBMs) and pharmacy services administrative
16 organizations (PSAOs) to ensure compliance with Section 4 6961 of
17 this ~~act~~ title.

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

19 1. Cause or knowingly permit the use of advertisement,
20 promotion, solicitation, representation, proposal or offer that is
21 untrue, deceptive or misleading;

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

24 a. the submission of a claim,

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 or PSAO reimburses a pharmacy
8 owned by or under common ownership with a PBM or PSAO for providing
9 the same covered services. The reimbursement amount paid to the
10 pharmacy shall be equal to the reimbursement amount calculated on a
11 per-unit basis using the same generic product identifier or generic
12 code number paid to the PBM-owned or PBM-affiliated pharmacy;

13 4. Deny a pharmacy the opportunity to participate in any form
14 of pharmacy network at preferred participation status, whether in-
15 network, preferred, or otherwise, if the pharmacy is willing to
16 accept the terms and conditions that the PBM or PSAO has established
17 for other pharmacies as a condition of preferred network for
18 participation status in the network or networks of the pharmacy's
19 choice;

20 5. Deny, limit or terminate a pharmacy's contract based on
21 employment status of any employee who has an active license to
22 dispense, despite probation status, with the State Board of
23 Pharmacy;

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

- 4 a. the original claim was submitted fraudulently, or
- 5 b. to correct errors identified in an audit, so long as
6 the audit was conducted in compliance with Sections
7 356.2 and 356.3 of Title 59 of the Oklahoma Statutes;
8 or

9 7. Fail to make any payment due to a pharmacy or pharmacist for
10 covered services properly rendered in the event a PBM terminates a
11 pharmacy or pharmacist from a pharmacy benefits manager network.

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

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

- 20 a. ~~not restrict, directly or indirectly, any pharmacy~~
21 ~~that dispenses a prescription drug from informing, or~~
22 ~~penalize such pharmacy for informing, an individual of~~
23 ~~any differential between the individual's out-of-~~
24 ~~pocket cost or coverage with respect to acquisition of~~

1 ~~the drug and the amount an individual would pay to~~
2 ~~purchase the drug directly~~ the nature of treatment,
3 risks, or alternatives to the prescription drug being
4 dispensed, 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~~ the
17 availability of alternate therapies, consultations, or
18 tests,

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

21 d. the process that is used to authorize or deny health
22 care services and structures used by the health
23 insurer.
24

1 2. ~~A pharmacy benefits manager's contract with a participating~~
2 ~~pharmacist or pharmacy~~ Provider contracts shall not prohibit a
3 pharmacy or pharmacist from discussing information regarding the
4 total cost of pharmacist services for a prescription drug or from
5 selling a more affordable alternative to the covered person if such
6 alternative is available.

7 3. Provider contracts shall not prohibit, restrict or limit
8 disclosure of information to the Insurance Commissioner, law
9 enforcement or state and federal governmental officials
10 investigating or examining a complaint or conducting a review of a
11 pharmacy benefits manager's compliance with the requirements under
12 the Patient's Right to Pharmacy Choice Act.

13 ~~3.~~ 4. A pharmacy benefits manager or pharmacy services
14 administrative organization shall establish and maintain an
15 electronic claim inquiry processing system using the National
16 Council for Prescription Drug Programs' current standards to
17 communicate information to pharmacies submitting claim inquiries.

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

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

1 B. Whenever a health insurer performs pharmacy benefits
2 management on its own behalf or contracts with another person or
3 entity to perform ~~activities required under this act~~ pharmacy
4 benefits management, the health insurer shall be responsible for
5 monitoring the activities and conduct of that person or entity with
6 whom the health insurer contracts and for ensuring that the
7 requirements of Section 6958 et seq. of this ~~act~~ title are met.

8 C. An individual may be notified at the point of sale when the
9 cash price for the purchase of a prescription drug is less than the
10 individual's copayment or coinsurance price for the purchase of the
11 same prescription drug.

12 D. A health insurer ~~or~~, pharmacy benefits manager (PBM), or
13 pharmacy services administrative organization (PSAO) shall not
14 restrict an individual's choice of in-network provider for
15 prescription drugs.

16 E. 1. An individual's A patient's choice of in-network
17 provider may include ~~a retail~~ an in-network pharmacy ~~or a~~, whether
18 that pharmacy is in a preferred or nonpreferred network, a retailer
19 pharmacy, mail-order pharmacy, or any other pharmacy. A health
20 insurer or PBM shall not restrict ~~such~~ a patient's choice of in-
21 network pharmacy providers. ~~Such~~ A health insurer or PBM shall not
22 require or incentivize individuals by:

- 23 a. using any ~~discounts in cost-sharing or a~~ reduction in
24 copay ~~or~~, the number of copays, or any other patient-

1 copay equivalent to individuals to receive
2 prescription drugs from an individual's choice of in-
3 network pharmacy, or

4 b. using financial incentives to differentiate between
5 in-network pharmacies, whether that pharmacy is in a
6 preferred or nonpreferred network, a retail pharmacy,
7 mail-order pharmacy, or any other type of pharmacy.

8 2. Nothing in this subsection shall be construed to prohibit a
9 person or entity participating in pharmacy benefits management or
10 pharmacy services administrative organization activities from
11 directing a patient to use a specific pharmacy for the purchase of a
12 specialty drug as defined in paragraph 8 of Section 6960 of this
13 title in the event the patient's chosen in-network pharmacy is
14 unable to purchase and dispense the specialty drug.

15 F. A health insurer, pharmacy ~~or~~, PBM, or PSAO shall adhere to
16 all Oklahoma laws, statutes and rules when mailing, shipping and/or
17 causing to be mailed or shipped prescription drugs into ~~the State of~~
18 ~~Oklahoma~~ this state.

19 SECTION 5. REPEALER 36 O.S. 2021, Section 6964, is
20 hereby repealed.

21 SECTION 6. This act shall become effective November 1, 2022.

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23 58-2-11363 KN 04/13/22

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