

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: Ryan Martinez

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, and

17 b. drug rebate contract negotiation or drug rebate
18 administration;

19 4. "Pharmacy benefits manager" or "PBM" means a person or
20 entity that performs pharmacy benefits management activities and any
21 other person or entity acting for ~~such a person under a contractual~~
22 ~~or 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 payer or a~~

1 ~~health program administered by a department of this state or entity~~
2 ~~performing pharmacy benefits management activities. Notwithstanding~~
3 ~~any other provision within the Patient's Right to Pharmacy Choice~~
4 ~~Act, an employer or organized labor union that sponsors a self-~~
5 ~~funded group health plan shall not be deemed to be a pharmacy~~
6 ~~benefits manager of its own group health plan and shall not be~~
7 ~~restricted in its ability to design and manage its own group health~~
8 ~~plan;~~

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

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

16 ~~5. 6. "Retail pharmacy network" means retail pharmacy providers~~
17 ~~contracted with a PBM in which the pharmacy primarily fills and~~
18 ~~sells prescriptions via a retail, storefront location;~~

19 ~~6. 7. "Rural service area" means a five-digit ZIP code in which~~
20 ~~the population density is less than one thousand (1,000) individuals~~
21 ~~per square mile;~~

22 ~~8. "Specialty drug" means prescription medication that requires~~
23 ~~special handling, administration, or monitoring and is used for the~~
24 ~~treatment of patients with serious health conditions requiring~~

1 complex therapies. Specialty drugs shall also include drugs that
2 are limited in distribution by the manufacturer and may be purchased
3 only at specialty pharmacies;

4 ~~7.~~ 9. "Suburban service area" means a five-digit ZIP code in
5 which the population density is between one thousand (1,000) and
6 three thousand (3,000) individuals per square mile; and

7 ~~8.~~ 10. "Urban service area" means a five-digit ZIP code in
8 which the population density is greater than three thousand (3,000)
9 individuals per square mile.

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

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

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

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

22 3. At least ninety percent (90%) of covered individuals
23 residing in a each suburban service area live within five (5) miles
24

1 of a retail pharmacy participating in the PBM's retail pharmacy
2 network;

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

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

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

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

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

21 D. Pharmacy benefits managers shall not in any manner on any
22 material, including but not limited to mail and ID cards, include
23 the name of any pharmacy, hospital or other providers unless it
24 specifically lists all pharmacies, hospitals and providers

1 participating in the preferred and nonpreferred pharmacy and health
2 networks.

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

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

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

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

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

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

21 3. Reimburse a pharmacy or pharmacist in the state an amount
22 less than the amount that the PBM reimburses a pharmacy owned by or
23 under common ownership with a PBM for providing the same covered
24 services. The reimbursement amount paid to the pharmacy shall be

1 equal to the reimbursement amount calculated on a per-unit basis
2 using the same generic product identifier or generic code number
3 paid to the PBM-owned or PBM-affiliated pharmacy;

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

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

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

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

23
24

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. ~~A pharmacy benefits manager's contract with a participating~~
16 ~~pharmacist or pharmacy Provider contracts shall not prohibit a~~
17 ~~pharmacy or pharmacist from discussing information regarding the~~
18 ~~total cost of pharmacist services for a prescription drug or from~~
19 ~~selling a more affordable alternative to the covered person if such~~
20 ~~alternative is available.~~

21 3. Provider contracts shall not prohibit, restrict or limit
22 disclosure of information to the Insurance Commissioner, law
23 enforcement or state and federal governmental officials
24 investigating or examining a complaint or conducting a review of a

1 pharmacy benefits manager's compliance with the requirements under
2 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
24 Section 6960 of this title in the event the patient's chosen in-

1 network pharmacy is unable to purchase and dispense the specialty
2 drug.

3 F. A health insurer, pharmacy or PBM shall adhere to all
4 Oklahoma laws, statutes and rules when mailing, shipping and/or
5 causing to be mailed or shipped prescription drugs into ~~the State of~~
6 ~~Oklahoma~~ this state.

7 SECTION 5. REPEALER 36 O.S. 2021, Section 6964, is
8 hereby repealed.

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

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11 58-2-11362 KN 04/13/22

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