

1 **SENATE FLOOR VERSION**

2 February 22, 2021

3 **AS AMENDED**

4 SENATE BILL NO. 721

5 By: Hicks and Simpson

6 **[prescription drugs - Access to Lifesaving Medicines**
7 **Act - noncodification - codification - effective date**
8 **]**

9
10 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

11 SECTION 1. NEW LAW A new section of law not to be
12 codified in the Oklahoma Statutes reads as follows:

13 This act shall be known and may be cited as the "Access to
14 Lifesaving Medicines Act".

15 SECTION 2. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 6970 of Title 36, unless there
17 is created a duplication in numbering, reads as follows:

18 A. As used in this act:

19 1. "Adjusted out-of-pocket amount" means the co-payment, co-
20 insurance or other cost sharing obligation the health benefit plan
21 requires the insured to pay at the point of sale for a covered
22 prescription medication otherwise payable, less the pro rata portion
23 of any discounts, rebates and price concessions in connection with
24 the prescription drug;

1 2. "Claim" means any bill, claim or proof of loss made by or on
2 behalf of an insured or a provider to a health insurer or its
3 intermediary, administrator or representative, with which the
4 provider has a provider contract for payment for health care
5 services under any health benefit plan;

6 3. "Commissioner" means the Insurance Commissioner;

7 4. "Excess cost burden" means any co-payments, co-insurance or
8 other cost sharing an insured is required to pay at the point-of-
9 sale to receive a prescription drug or device, that exceeds the
10 health insurer's or pharmacy benefit manager's net cost after
11 applying a pro-rata portion of any discounts, rebates or concessions
12 received from manufacturers, pharmacies or other third parties;

13 5. "Health benefit plan" means any individual or group health
14 benefit plan, subscription contract, evidence of coverage,
15 certificate, health services plan, medical or hospital services
16 plan, accident and sickness insurance policy or certificate, managed
17 care health insurance plan or other similar certificate, policy,
18 contract or arrangement, and any endorsement or rider thereto, to
19 cover all or a portion of the cost of persons receiving covered
20 health care services, which is subject to state regulation and which
21 is required to be offered, arranged or issued in this state. Health
22 benefit plan shall not mean:

- 23 a. coverage issued pursuant to Title XVIII of the Social
24 Security Act, 42 U.S.C. § 75 1395 et seq., as amended,

1 Title XIX of the Social Security Act, 42 U.S.C. § 1396
2 et seq., as amended, or Title XXI of the Social
3 Security Act, 42 U.S.C. § 1397aa et seq., as amended,
4 5 U.S.C. § 8901 et seq., as amended, or 10 U.S.C. §
5 1071 et seq., as amended or,

6 b. accident only, credit or disability insurance, long-
7 term care insurance, TRICARE supplement, Medicare
8 supplement, or workers' compensation coverages;

9 6. "Health care provider" or "provider" means a person who is
10 licensed, certified or otherwise authorized by the laws of this
11 state as a physician, physician assistant, certified nurse
12 practitioner, advanced practice registered nurse, to include one
13 with a certified specialty, registered nurse or licensed practical
14 nurse, but shall not include a nurse midwife;

15 7. "Health insurer" means any entity subject to the
16 jurisdiction of the Insurance Department and the insurance laws and
17 regulations of this state that contracts or offers to contract to
18 provide, deliver, arrange for, pay for or reimburse any of the costs
19 of health care services including but not limited to a health
20 maintenance organization, a health benefit plan or any other entity
21 providing a plan of health insurance, health benefits or health care
22 services;

1 8. "Insured" means a consumer covered under a health benefit
2 plan with prescription drug coverage that is offered by a health
3 insurer;

4 9. "Maximum allowable claim" means the amount the health
5 insurer or pharmacy benefits manager has agreed to pay a pharmacy,
6 as defined in Section 353.1 of Title 59 of the Oklahoma Statutes,
7 for the prescription medication;

8 10. "Maximum allowable cost" means the maximum dollar amount
9 that a health insurer or its intermediary will reimburse a pharmacy
10 provider for a group of drugs rated as "A", "AB", "NR" or "NA" in
11 the most recent edition of the Approved Drug Products with
12 Therapeutic Equivalence Evaluations, published by the U.S. Food and
13 Drug Administration, or similarly rated by a nationally recognized
14 reference;

15 11. "Point of sale" means the transaction in which goods or
16 services, which shall include but are not limited to prescription
17 medications, medical devices and supplies, are sold to the consumer;

18 12. "Rebate" includes but is not limited to the following:

19 a. negotiated price concessions including but not limited
20 to base rebates and reasonable estimates of any price
21 protection rebates and performance-based rebates that
22 may accrue directly or indirectly to the health
23 insurer or pharmacy benefit manager as a result of
24 point of sale prescription medication claims

1 processing during the coverage year from a
2 manufacturer, dispensing pharmacy or other party to
3 the transaction, or

- 4 b. reasonable estimates of any fees and other
5 administrative costs that are passed through to the
6 health insurer as a result of point of sale
7 prescription medication claims processing and serve to
8 reduce the health insurer's prescription medication
9 liabilities for the coverage year;

10 13. "Provider contract" means any contract between a provider
11 and a health insurer, or an insurer's network, provider panel,
12 intermediary or representative, relating to the provision of health
13 care services;

14 SECTION 3. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 6971 of Title 36, unless there
16 is created a duplication in numbering, reads as follows:

17 A. Health insurers and pharmacy benefit managers that issue,
18 renew, or amend health benefit plans with prescription drug coverage
19 in this state are prohibited from imposing excess cost burden on an
20 insured.

21 B. All discounts, rebates, price concessions and fees related
22 to a prescription medication claim shall be passed to the insured at
23 point of sale and shall not be retained by the health insurer or
24 pharmacy benefit manager. Health insurers and pharmacy benefit

1 managers may retain transaction fees for each pharmacy claim
2 processed. Transaction fee amounts shall be established in provider
3 contracts.

4 C. Prescription drug cost sharing for an insured shall be the
5 lesser of:

6 1. The applicable co-payment for the prescription medication
7 that would be payable in the absence of this section;

8 2. The maximum allowable cost;

9 3. The maximum allowable claim;

10 4. The adjusted out-of-pocket amount as determined pursuant to
11 Section 2 of this act;

12 5. The amount an insured would pay for the prescription
13 medication if they purchased it without using their health benefit
14 plan or any other source of prescription medication benefits or
15 discounts; or

16 6. The amount the pharmacy will be reimbursed for the
17 prescription medication by the health insurer or pharmacy benefit
18 manager.

19 D. The Insurance Commissioner shall promulgate rules and
20 regulations to implement the provisions of this section.

21 SECTION 4. This act shall become effective November 1, 2021.

22 COMMITTEE REPORT BY: COMMITTEE ON RETIREMENT AND INSURANCE
23 February 22, 2021 - DO PASS AS AMENDED
24