

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 HOUSE BILL 2137

By: Perryman

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5  
6 AS INTRODUCED

7 An Act relating to pharmacy; creating the Oklahoma  
8 Pharmacy Benefits Manager Licensure Act; declaring  
9 purpose; defining terms; requiring a pharmacy  
10 benefits manager to obtain a license; authorizing the  
11 Insurance Commissioner to establish licensure fees;  
12 requiring a pharmacy benefits manager to provide a  
13 network for patient access to pharmacies; authorizing  
14 a compensation program; prohibiting certain acts;  
15 providing for disclosure of information; directing  
16 the Insurance Commissioner to enforce the Oklahoma  
17 Pharmacy Benefits Manager Licensure Act; authorizing  
18 the Insurance Commissioner to promulgate rules;  
19 providing for applicability; providing for  
20 codification; and providing an effective date.

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

22 SECTION 1. NEW LAW A new section of law to be codified  
23 in the Oklahoma Statutes as Section 360.1 of Title 59, unless there  
24 is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma  
Pharmacy Benefits Manager Licensure Act".

1 SECTION 2. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 360.2 of Title 59, unless there  
3 is created a duplication in numbering, reads as follows:

4 A. The Oklahoma Pharmacy Benefits Manager Licensure Act  
5 establishes the standards and criteria for the regulation and  
6 licensure of pharmacy benefits managers providing claims processing  
7 services or other prescription drug or device services for health  
8 benefit plans.

9 B. The purpose of this act is to:

10 1. Promote, preserve and protect the public health, safety and  
11 welfare through effective regulation and licensure of pharmacy  
12 benefits managers;

13 2. Provide for powers and duties of the Insurance Commissioner,  
14 the Oklahoma Insurance Department and other state agencies and  
15 officers; and

16 3. Prescribe penalties and fines for violations of this act.

17 SECTION 3. NEW LAW A new section of law to be codified  
18 in the Oklahoma Statutes as Section 360.3 of Title 59, unless there  
19 is created a duplication in numbering, reads as follows:

20 As used in the Oklahoma Pharmacy Benefits Manager Licensure Act:

21 1. "Claims processing services" means the administrative  
22 services performed in connection with the processing and  
23 adjudicating of claims relating to pharmacist services that include:

24 a. receiving payments for pharmacist services, or

1           b.    making payments to pharmacists or pharmacies for  
2                    pharmacist services;

3           2. "Health benefit plan" means any individual, blanket or group  
4 plan, policy or contract for healthcare services issued or delivered  
5 by a healthcare insurer in this state. "Health benefit plan" does  
6 not include:

- 7           a.    accidental-only plans,
- 8           b.    specified disease plans,
- 9           c.    disability income plans,
- 10          d.    plans that provide only for indemnity for hospital  
11                confinement,
- 12          e.    long-term care only plans that do not include pharmacy  
13                benefits,
- 14          f.    other limited-benefit health insurance policies or  
15                plans, or
- 16          g.    health benefit plans provided under the Workers'  
17                Compensation Laws of the State of Oklahoma as  
18                contained in either Title 85 or Title 85A of the  
19                Oklahoma Statutes;

20          3. "Healthcare insurer" means an insurance company, a health  
21 maintenance organization or a hospital and medical service  
22 corporation;

23          4. "Other prescription drug or device services" means services  
24 other than claims processing services, provided directly or

1 indirectly, whether in connection with or separate from claims  
2 processing services, including without limitation:

- 3 a. negotiating rebates, discounts or other financial
- 4 incentives and arrangements with drug companies,
- 5 b. disbursing or distributing rebates,
- 6 c. managing or participating in incentive programs or
- 7 arrangements for pharmacist services,
- 8 d. negotiating or entering into contractual arrangements
- 9 with pharmacists or pharmacies, or both,
- 10 e. developing formularies,
- 11 f. designing prescription benefit programs, or
- 12 g. advertising or promoting services;

13 5. "Pharmacist" means an individual licensed as a pharmacist by  
14 the Oklahoma State Board of Pharmacy;

15 6. "Pharmacist services" means products, goods and services, or  
16 any combination of products, goods and services, provided as a part  
17 of the practice of pharmacy as defined in Section 353.1 of Title 59  
18 of the Oklahoma Statutes;

19 7. "Pharmacy" means the same as defined in Section 353.1 of  
20 Title 59 of the Oklahoma Statutes;

21 8. "Pharmacy benefits manager" means a person, business or  
22 entity, including a wholly or partially owned or controlled  
23 subsidiary of a pharmacy benefits manager, that provides claims  
24 processing services or other prescription drug or device services,

1 or both, for health benefit plans. "Pharmacy benefits manager" does  
2 not include any:

- 3 a. health care facility licensed in Oklahoma,
- 4 b. health care professional licensed in Oklahoma,
- 5 c. consultant who only provides advice as to the  
6 selection or performance of a pharmacy benefits  
7 manager, or
- 8 d. entity that provides claims processing services or  
9 other prescription drug or device services for the  
10 fee-for-service Oklahoma Medicaid Program only in that  
11 capacity;

12 9. "Pharmacy benefits manager affiliate" means a pharmacy or  
13 pharmacist that directly or indirectly, through one or more  
14 intermediaries, owns or controls, is owned or controlled by, or is  
15 under common ownership or control with a pharmacy benefits manager;

16 10. "Pharmacy benefits manager network" means a network of  
17 pharmacists or pharmacies that are offered by an agreement or  
18 insurance contract to provide pharmacist services for health benefit  
19 plans;

20 11. "Pharmacy benefits plan or program" means a plan or program  
21 that pays for, reimburses, covers the cost of, or otherwise provides  
22 for pharmacist services under a health benefit plan;

23 12. "Pharmacy services administrative organization" means an  
24 organization that helps community pharmacies and pharmacy benefits

1 managers or third-party payors achieve administrative efficiencies,  
2 including contracting and payment efficiencies;

3 13. "Rebate" means a discount or other price concession based  
4 on utilization of a prescription drug that is paid by a manufacturer  
5 or third party, directly or indirectly, to a pharmacy benefits  
6 manager, pharmacy services administrative organization or pharmacy  
7 after a claim has been processed and paid at a pharmacy. "Rebate"  
8 includes without limitation incentives, disbursements and reasonable  
9 estimates of a volume-based discount; and

10 14. "Third party" means a person, business or entity other than  
11 a pharmacy benefits manager that is not an enrollee or insured in a  
12 health benefit plan.

13 SECTION 4. NEW LAW A new section of law to be codified  
14 in the Oklahoma Statutes as Section 360.4 of Title 59, unless there  
15 is created a duplication in numbering, reads as follows:

16 A. A person or organization shall not establish or operate as a  
17 pharmacy benefits manager in Oklahoma for health benefit plans  
18 without obtaining a license from the Insurance Commissioner under  
19 the Oklahoma Pharmacy Benefits Manager Licensure Act.

20 B. The Insurance Commissioner shall prescribe the application  
21 for a license to operate in Oklahoma as a pharmacy benefits manager  
22 and may charge application fees and renewal fees as established by  
23 rule.

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1 C. The Insurance Commissioner shall issue rules establishing  
2 the licensing, fees, application, financial standards and reporting  
3 requirements of pharmacy benefits managers under the Oklahoma  
4 Pharmacy Benefits Manager Licensure Act.

5 SECTION 5. NEW LAW A new section of law to be codified  
6 in the Oklahoma Statutes as Section 360.5 of Title 59, unless there  
7 is created a duplication in numbering, reads as follows:

8 A pharmacy benefits manager shall provide:

9 1. a. A reasonably adequate and accessible pharmacy benefits  
10 manager network for the provision of prescription  
11 drugs for a health benefit plan that shall provide for  
12 convenient patient access to pharmacies within a  
13 reasonable distance from a patient's residence.

14 b. A mail-order pharmacy shall not be included in the  
15 calculations determining pharmacy benefits manager  
16 network adequacy; and

17 2. A pharmacy benefits manager network adequacy report  
18 describing the pharmacy benefits manager network and the pharmacy  
19 benefits manager network's accessibility in this state in the time  
20 and manner required by rule issued by the Oklahoma Insurance  
21 Department.

22 SECTION 6. NEW LAW A new section of law to be codified  
23 in the Oklahoma Statutes as Section 360.6 of Title 59, unless there  
24 is created a duplication in numbering, reads as follows:

1           A. 1. The Insurance Commissioner may review and approve the  
2 compensation program of a pharmacy benefits manager with a health  
3 benefit plan to ensure that the reimbursement for pharmacist  
4 services paid to a pharmacist or pharmacy is fair and reasonable to  
5 provide an adequate pharmacy benefits manager network for a health  
6 benefit plan under the standards issued by rule of the Oklahoma  
7 Insurance Department.

8           2. All information and data acquired during the review under  
9 paragraph 1 of this subsection is:

- 10           a. considered proprietary and confidential, and
- 11           b. not subject to the Oklahoma Open Records Act.

12           B. A pharmacy benefits manager or representative of a pharmacy  
13 benefits manager shall not:

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

17           2. Unless reviewed and approved by the Insurance Commissioner,  
18 charge a pharmacist or pharmacy a fee related to the adjudication of  
19 a claim, including without limitation a fee for:

- 20           a. the receipt and processing of a pharmacy claim,
- 21           b. the development or management of claims processing  
22           services in a pharmacy benefits manager network, or
- 23           c. participation in a pharmacy benefits manager network;

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1           3. Unless reviewed and approved by the Insurance Commissioner  
2 in coordination with the Oklahoma State Board of Pharmacy, require  
3 pharmacy accreditation standards or certification requirements  
4 inconsistent with, more stringent than, or in addition to  
5 requirements of the Board; and

6           4. Reimburse a pharmacy or pharmacist in the state an amount  
7 less than the amount that the pharmacy benefits manager reimburses a  
8 pharmacy benefits manager affiliate for providing the same  
9 pharmacist services. The amount shall be calculated on a per-unit  
10 basis using the same generic product identifier or generic code  
11 number.

12           C. A claim for pharmacist services shall not be retroactively  
13 denied or reduced after adjudication of the claim, unless:

- 14           1. The original claim was submitted fraudulently;  
15           2. The original claim payment was incorrect because the  
16 pharmacy or pharmacist had already been paid for the pharmacist  
17 services; or

18           3. The pharmacist services were not properly rendered by the  
19 pharmacy or pharmacist.

20           D. Termination of a pharmacy or pharmacist from a pharmacy  
21 benefits manager network shall not release the pharmacy benefits  
22 manager from the obligation to make any payment due to the pharmacy  
23 or pharmacist for pharmacist services properly rendered.

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1 E. The Insurance Commissioner may promulgate rules establishing  
2 prohibited practices of pharmacy benefits managers providing claims  
3 processing services or other prescription drug or device services  
4 for health benefit plans.

5 SECTION 7. NEW LAW A new section of law to be codified  
6 in the Oklahoma Statutes as Section 360.7 of Title 59, unless there  
7 is created a duplication in numbering, reads as follows:

8 A. A pharmacy or pharmacist may provide to an insured  
9 information regarding the insured's total cost for pharmacist  
10 services for a prescription drug.

11 B. A pharmacy or pharmacist shall not be proscribed by a  
12 pharmacy benefits manager from discussing information regarding the  
13 total cost for pharmacist services for a prescription drug or from  
14 selling a more affordable alternative to the insured if a more  
15 affordable alternative is available.

16 C. A pharmacy benefits manager contract with a participating  
17 pharmacist or pharmacy shall not prohibit, restrict or limit  
18 disclosure of information to the Insurance Commissioner, law  
19 enforcement or state and federal governmental officials  
20 investigating or examining a complaint or conducting a review of a  
21 pharmacy benefits manager's compliance with the requirements under  
22 the Oklahoma Pharmacy Benefits Managers Licensure Act.

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1 SECTION 8. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 360.8 of Title 59, unless there  
3 is created a duplication in numbering, reads as follows:

4 A. The Insurance Commissioner shall enforce the Oklahoma  
5 Pharmacy Benefits Manager Licensure Act.

6 B. 1. The Insurance Commissioner may examine or audit the  
7 books and records of a pharmacy benefits manager providing claims  
8 processing services or other prescription drug or device services  
9 for a health benefit plan to determine if the pharmacy benefits  
10 manager is in compliance with this act.

11 2. The information or data acquired during an examination under  
12 paragraph 1 of this subsection is:

- 13 a. considered proprietary and confidential, and
- 14 b. not subject to the Oklahoma Open Records Act.

15 SECTION 9. NEW LAW A new section of law to be codified  
16 in the Oklahoma Statutes as Section 360.9 of Title 59, unless there  
17 is created a duplication in numbering, reads as follows:

18 A. 1. The Insurance Commissioner may adopt rules regulating  
19 pharmacy benefits managers that are not inconsistent with the  
20 Oklahoma Pharmacy Benefits Manager Licensure Act.

21 2. Rules that the Insurance Commissioner may adopt under this  
22 act include, without limitation, rules relating to:

- 23 a. licensing,
- 24 b. application fees,

- c. financial solvency requirements,
- d. pharmacy benefits manager network adequacy,
- e. prohibited market conduct practices,
- f. data reporting requirements,
- g. compliance and enforcement requirements concerning  
Maximum Allowable Cost Lists,
- h. rebates,
- i. compensation, or
- j. lists of health benefit plans administered by a  
pharmacy benefits manager in this state.

B. Rules adopted under this act shall set penalties or fines, including without limitation monetary fines, suspension of licensure and revocation of licensure for violations of this act and rules adopted under this act.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 360.10 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Pharmacy Benefits Manager Licensure Act is applicable to a contract or health benefit plan issued, renewed, re-credentialed, amended or extended on and after November 1, 2019.

B. A contract existing on the date of licensure of the pharmacy benefits manager under this act shall comply with the requirements of this act as a condition of licensure for the pharmacy benefits manager.

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SECTION 11. This act shall become effective November 1, 2019.

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