HOUSE OF REPRESENTATIVES - FLOOR VERSION

STATE OF OKLAHOMA

2nd Session of the 59th Legislature (2024)

HOUSE BILL 3379 By: McEntire, **Deck**, and **West (Tammy)** of the House

and

Howard of the Senate

AS INTRODUCED

An Act relating to prescriptions; creating the Oklahoma Health Care Safety Net and Affordable Prescriptions Accessibility Act; defining terms; prohibiting certain discriminatory actions related to reimbursement of certain entities; prohibiting certain discriminatory actions by a manufacturer or distributor related to certain entities; providing for enforcement by the Attorney General and Insurance Commissioner; providing for violations; providing for federal preemption; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5400 of Title 36, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Health Care Safety Net and Affordable Prescriptions Accessibility Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5401 of Title 36, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "340B drug" means a drug that has been subject to any offer for reduced prices by a manufacturer pursuant to Section 256b of Title 42 of the United States Code and is purchased by a covered entity as defined in Section 256b(a)(4) of Title 42 of the United States Code;

2. "340B entity" means an entity participating or authorized to participate in the federal 340B drug discount program, as described in Section 256b of Title 42 of the United States Code, including its pharmacy, or any pharmacy contracted with the participating entity to dispense drugs purchased through the 340B drug discount program;

3. "Pharmacy" means a pharmacy licensed by the Oklahoma State Board of Pharmacy, except that patients who are provided pharmacy care shall be physically located in the state; and

4. "Pharmacy benefit manager" means a person that performs pharmacy benefits management and any other person acting for such person under a contractual or employment relationship in the performance of pharmacy benefits management for a managed care company, nonprofit hospital, medical service organization, insurance

company, third-party payor or a health program administered by a department of this state.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5402 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. 1. With respect to reimbursement to a 340B entity for 340B drugs, a health insurance issuer, pharmacy benefit manager, other third-party payor, or its agent shall not:

a. reimburse a 340B entity for 340B drugs at a rate lower than that paid for the same drug to entities that are not 340B entities or lower reimbursement for a claim on the basis that the claim is for a 340B drug,

b. impose any terms or conditions on any 340B entity with respect to any of the following that differ from such terms or conditions applied to non-340B entities on the basis that the entity participates in the federal 340B drug discount program set forth in Section 256b of Title 42 of the United States Code or that a drug is a 340B drug including, without limitation, any of the following:

(1) fees, charges, clawbacks, or other adjustments or assessments. For purposes of this subsection, the term "other adjustments" includes placing any additional requirements, restrictions, or

unnecessary burdens upon the 340B entity that result in administrative costs or fees to the 340B entity that are not placed upon other entities that do not participate in the 340B drug discount program, including affiliate pharmacies of the health insurance issuer, pharmacy benefit manager, or other third-party payor,

(2) dispensing fees that are less than the dispensing fees for non-340B entities,

(3) restrictions or requirements regarding participation in standard or preferred pharmacy networks,

(4) requirements relating to the frequency or scope of audits of inventory management systems,

(5) requirements that a claim for a drug include any identification, billing modifier, attestation, or other indication that a drug is a 340B drug in order to be processed or resubmitted unless it is required by the Centers for Medicare and Medicaid Services or the Oklahoma Health Care Authority for the administration of the Oklahoma Medicaid program, or

(6) any other restrictions, conditions, practices, or policies that are not imposed on non-340B entities.

c. require a 340B entity to reverse, resubmit, or clarify a claim after the initial adjudication unless these actions are in the normal course of pharmacy business and not related to 340B drug pricing,

d. discriminate against a 340B entity in a manner that prevents or interferes with any patient's choice to receive such drugs from the 340B entity, including the administration of such drugs. For purposes of this subsection, it is considered a discriminatory practice that prevents or interferes with a patient's choice to receive drugs at a 340B entity if a health insurance issuer, pharmacy benefit manager, or other third-party payor places any additional requirements, restrictions, or unnecessary burdens upon the 340B entity that results in administrative costs or fees to the 340B entity, including but not limited to, requiring a claim for a drug to include any identification, billing modifier, attestation, or other indication that a drug is a 340B drug in order to be processed or resubmitted unless it is required by the Centers for Medicare and Medicaid Services or

the Oklahoma Health Care Authority in administration of the Oklahoma Medicaid program,

e. include any other provision in a contract between a health insurance issuer, pharmacy benefit manager, or other third-party payor and a 340B entity that discriminates against the 340B entity or prevents or interferes with an individual's choice to receive a prescription drug from a 340B entity, including the administration of the drug, in person or via direct delivery, mail, or other form of shipment, or creation of a restriction or additional charge on a patient who chooses to receive drugs from a 340B entity,

f. require or compel the submission of ingredient costs or pricing data pertaining to 340B drugs to any health insurance issuer, pharmacy benefit manager, or other third-party payor,

g. exclude any 340B entity from the health insurance issuer, pharmacy benefit manager, or other third-party payor network on the basis that the 340B entity dispenses drugs subject to an agreement under Section 256b of Title 42 of the United State Code, or refusing to contract with a 340B entity for reasons other than those that apply equally to non-340B entities.

B. Nothing in this section applies to the Oklahoma Medicaid program as payor when Medicaid provides reimbursement for covered outpatient drugs as defined in section 1396r-8(k) of Title 42 of the United States Code.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5403 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. A manufacturer or distributor shall not deny, restrict, prohibit, or otherwise interfere with, either directly or indirectly, the acquisition of a 340B drug by, or delivery of a 340B drug to, a pharmacy that is under contract with a 340B entity and is authorized under such contract to receive and dispense 340B drugs on behalf of the covered entity unless such receipt is prohibited by the United States Department of Health and Human Services.

B. A manufacturer or distributor shall not interfere with a pharmacy contracted with a 340B entity.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5404 of Title 36, unless there is created a duplication in numbering, reads as follows:

The Attorney General may make rules and regulations interpreting the provisions of this act, and shall make recommendations to the Oklahoma Insurance Commissioner for enforcement with the jurisdiction of the Insurance Commissioner.

The Insurance Commissioner may censure, suspend, revoke, or refuse to issue or renew a license of or levy a civil penalty against any person licensed under the insurance laws of this state for any violation of this act.

In addition to or in lieu of any applicable censure, suspension or revocation of a license, a manufacturer, distributor, health insurance issuer, pharmacy benefit manager, other third-party payor, or its agent may be subject to a civil fine of not less than One Hundred Dollars ($100.00) and not greater than Ten Thousand Dollars ($10,000.00) for each violation of the provisions of this act.

A violation occurs each time a prohibited act is committed.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5405 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Nothing in this section is to be construed or applied to be less restrictive than federal law for a person or entity regulated by this act.

B. Nothing in this act is to be construed or applied to be in conflict with any of the following:

1. Applicable federal law and related regulations; or

2. Other laws of this state if the state law is compatible with applicable federal law.

C. Limited distribution of a drug required under section 355-1 of Title 21 of the United States Code is not to be construed as a

violation of this section.

SECTION 7. This act shall become effective November 1, 2024.

COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET, dated 02/29/2024 - DO PASS, As Coauthored.