

1 **SENATE FLOOR VERSION**

2 April 11, 2022

3 **AS AMENDED**

4 ENGROSSED HOUSE

5 BILL NO. 3514

6 By: McEntire of the House

7 and

8 Jett of the Senate

9 [professions and occupations - pharmacy benefit
10 plans - modifying powers of Oklahoma Insurance
11 Department - effective date]

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

13 SECTION 1. AMENDATORY 59 O.S. 2021, Section 357,

14 is amended to read as follows:

15 Section 357. As used in this act:

16 1. "Covered entity" means:

17 a. a nonprofit hospital or medical service organization,
18 insurer, health coverage plan or health maintenance
19 organization~~†~~,

20 b. a health program administered by the state in the
21 capacity of provider of health coverage~~†~~ or

22 c. an employer, labor union, or other entity organized in
23 the state that provides health coverage to covered
24 individuals who are employed or reside in the state.

1 This term does not include a health plan that provides coverage only
2 for accidental injury, specified disease, hospital indemnity,
3 disability income, or other limited benefit health insurance
4 policies and contracts that do not include prescription drug
5 coverage;

6 2. "Covered individual" means a member, participant, enrollee,
7 contract holder or policy holder or beneficiary of a covered entity
8 who is provided health coverage by the covered entity. A covered
9 individual includes any dependent or other person provided health
10 coverage through a policy, contract or plan for a covered
11 individual;

12 3. "Department" means the Oklahoma Insurance Department;

13 4. "Maximum allowable cost" or "MAC" means the list of drug
14 products delineating the maximum per-unit reimbursement for
15 multiple-source prescription drugs, medical product or device;

16 5. "Multisource drug product reimbursement" (reimbursement)
17 means the total amount paid to a pharmacy inclusive of any reduction
18 in payment to the pharmacy, excluding prescription dispense fees;

19 6. "Pharmacy benefits management" means a service provided to
20 covered entities to facilitate the provision of prescription drug
21 benefits to covered individuals within the state, including
22 negotiating pricing and other terms with drug manufacturers and
23 providers. Pharmacy benefits management may include any or all of
24 the following services:

- a. claims processing, retail network management and payment of claims to pharmacies for prescription drugs dispensed to covered individuals,
- b. clinical formulary development and management services,
- c. rebate contracting and administration,
- d. certain patient compliance, therapeutic intervention and generic substitution programs, or
- e. disease management programs;

7. "Pharmacy benefits manager" or "PBM" means a person, business or other entity that performs pharmacy benefits management. The term includes a person or entity acting for a PBM in 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 an agency of this state;

8. "Plan sponsor" means the employers, insurance companies, unions and health maintenance organizations or any other entity responsible for establishing, maintaining, or administering a health benefit plan on behalf of covered individuals; ~~and~~

9. "Provider" means a pharmacy ~~licensed by the State Board of Pharmacy,~~ or an agent or representative of a pharmacy, including,

1 but not limited to, the pharmacy's contracting agent, which
2 dispenses prescription drugs or devices to covered individuals; and

3 10. "Retail pharmacy" or "pharmacy" means a pharmacy, as
4 defined in Section 353.1 of this title.

5 SECTION 2. AMENDATORY 59 O.S. 2021, Section 358, is
6 amended to read as follows:

7 Section 358. A. In order to provide pharmacy benefits
8 management or any of the services included under the definition of
9 pharmacy benefits management in this state, a pharmacy benefits
10 manager or any entity acting as one in a contractual or employment
11 relationship for a covered entity shall first obtain a license from
12 the Oklahoma Insurance Department, and the Department may charge a
13 fee for such licensure.

14 B. The Department shall establish, by regulation, licensure
15 procedures, required disclosures for pharmacy benefits managers
16 (PBMs) and other rules as may be necessary for carrying out and
17 enforcing the provisions of this act. The licensure procedures
18 shall, at a minimum, include the completion of an application form
19 that shall include the name and address of an agent for service of
20 process, the payment of a requisite fee, and evidence of the
21 procurement of a surety bond.

22 C. The Department may subpoena witnesses and information. Its
23 compliance officers may take and copy records for investigative use
24 and prosecutions. Nothing in this subsection shall limit the Office

1 of the Attorney General from using its investigative demand
2 authority to investigate and prosecute violations of the law.

3 D. The Department may issue a cease and desist order, place on
4 probation, suspend, revoke or refuse to issue or renew a license for
5 noncompliance with any of the provisions hereby established or with
6 the rules promulgated by the Department; for conduct likely to
7 mislead, deceive or defraud the public or the Department; for unfair
8 or deceptive business practices or for nonpayment of a renewal fee
9 or fine. The Department may also issue or order a reprimand,
10 require restitution, and levy administrative fines not to exceed Ten
11 Thousand Dollars (\$10,000.00) for each count of which a ~~PBM~~ has been
12 convicted in a Department hearing any pharmacy benefits manager has
13 violated any of the provisions hereby established or with the rules
14 promulgated by the Department.

15 SECTION 3. AMENDATORY 59 O.S. 2021, Section 360, is
16 amended to read as follows:

17 Section 360. A. The pharmacy benefits manager shall, with
18 respect to contracts between a pharmacy benefits manager and a
19 provider, including a pharmacy service administrative organization:

20 1. Include in such contracts the specific sources utilized to
21 determine the maximum allowable cost (MAC) pricing of the pharmacy,
22 update MAC pricing at least every seven (7) calendar days, and
23 establish a process for providers to readily access the MAC list
24 specific to that provider;

1 2. In order to place a drug on the MAC list, ensure that the
2 drug is listed as "A" or "B" rated in the most recent version of the
3 FDA's Approved Drug Products with Therapeutic Equivalence
4 Evaluations, also known as the Orange Book, and the drug is
5 generally available for purchase by pharmacies in the state from
6 national or regional wholesalers and is not obsolete;

7 3. Ensure dispensing fees are not included in the calculation
8 of MAC price reimbursement to pharmacy providers;

9 4. Provide a reasonable administration appeals procedure to
10 allow a provider, a provider's representative and a pharmacy service
11 administrative organization to contest reimbursement amounts within
12 fourteen (14) business days of the final adjusted payment date. The
13 pharmacy benefits manager shall not prevent the pharmacy or the
14 pharmacy service administrative organization from filing
15 reimbursement appeals in an electronic batch format. The pharmacy
16 benefits manager must respond to a provider, a provider's
17 representative and a pharmacy service administrative organization
18 who have contested a reimbursement amount through this procedure
19 within ten (10) business days. The pharmacy benefits manager must
20 respond in an electronic batch format to reimbursement appeals filed
21 in an electronic batch format. The pharmacy benefits manager shall
22 not require a pharmacy or pharmacy services administrative
23 organization to log into a system to upload individual claim appeals
24 or to download individual appeal responses. If a price update is

1 warranted, the pharmacy benefits manager shall make the change in
2 the reimbursement amount, permit the dispensing pharmacy to reverse
3 and rebill the claim in question, and make the reimbursement amount
4 change retroactive and effective for all contracted providers; and

5 5. If a below-cost reimbursement appeal is denied, the PBM
6 shall provide the reason for the denial, including the National Drug
7 Code number ~~from~~ and the specific national or regional wholesalers
8 ~~where~~ from which the drug ~~is~~ was available for purchase by the
9 dispensing pharmacy at a price below the PBM's reimbursement price
10 as of the date the adjudication of the claim was made. If the
11 pharmacy benefits manager ~~cannot~~ fails to provide a specific
12 national or regional wholesaler ~~where~~ from which the drug ~~can be~~
13 ~~purchased~~ was available for purchase by the dispensing pharmacy at a
14 price below the pharmacy benefits manager's reimbursement price, the
15 pharmacy benefits manager shall immediately adjust the reimbursement
16 amount, permit the dispensing pharmacy to reverse and rebill the
17 claim in question, and make the reimbursement amount adjustment
18 retroactive and effective for all contracted providers.

19 B. The pharmacy benefits manager shall not place a drug on a
20 MAC list, unless there are at least two therapeutically equivalent,
21 multiple-source drugs, generally available for purchase by
22 dispensing retail pharmacies from national or regional wholesalers
23 which are listed as accredited drug distributors on the National
24

1 Association of Boards of Pharmacy (NABP) website or other website as
2 recognized and approved by the State Board of Pharmacy.

3 C. The pharmacy benefits manager shall not require
4 accreditation or licensing of providers, or any entity licensed or
5 regulated by the State Board of Pharmacy, other than by the State
6 Board of Pharmacy or federal government entity as a condition for
7 participation as a network provider.

8 D. A pharmacy or pharmacist may decline to provide the
9 pharmacist clinical or dispensing services to a patient or pharmacy
10 benefits manager if the pharmacy or pharmacist is to be paid less
11 than the pharmacy's cost for providing the pharmacist clinical or
12 dispensing services.

13 E. The pharmacy benefits manager shall provide a dedicated
14 telephone number, email address and names of the personnel with
15 decision-making authority regarding MAC appeals and pricing.

16 SECTION 4. This act shall become effective November 1, 2022.

17 COMMITTEE REPORT BY: COMMITTEE ON RETIREMENT AND INSURANCE
18 April 11, 2022 - DO PASS AS AMENDED
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