

1 STATE OF OKLAHOMA

2 2nd Session of the 58th Legislature (2022)

3 HOUSE BILL 3924

By: Pfeiffer

4  
5  
6 AS INTRODUCED

7 An Act relating to insurance; amending 36 O.S. 2021,  
8 Section 6960, which relates to definitions in the  
9 Patient's Right to Pharmacy Choice Act; modifying  
10 definitions; adding definitions of certain terms;  
11 amending 36 O.S. 2021, Section 6962, which relates to  
12 compliance and prohibitions; clarifying reference;  
13 prohibiting spread pricing; modifying duties of  
14 pharmacy benefits managers; directing the Insurance  
15 Commissioner on procedure for violation of the  
16 Patient's Right to Pharmacy Choice Act; exempting  
17 certain groups; providing for codification; providing  
18 an effective date; and declaring an emergency.

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

20 SECTION 1. AMENDATORY 36 O.S. 2021, Section 6960, is  
21 amended to read as follows:

22 Section 6960. For purposes of the Patient's Right to Pharmacy  
23 Choice Act:

24 1. "Administrator" means any person or entity defined in 29  
U.S.C., Section 1002(16) (A);

1        2. "Employee benefit plan" means any person or entity defined  
2 in 29 U.S.C., Section 1002(1) and (3), and covered by 29 U.S.C.,  
3 Section 1003;

4        3. "Fiduciary" means any person or entity defined in 29 U.S.C.,  
5 Section 1002(21);

6        4. "Health insurer" means any business entity, corporation,  
7 company, mutual reserve company, association, benefit society,  
8 exchange, partnership or individual, that is either:

9            a. engaged in the business of insurance in Oklahoma; or

10           b. licensed by under the Oklahoma Insurance Code;

11        5. "Health insurer payor" means a health insurance company,  
12 health maintenance organization, union, hospital and medical  
13 services organization or, except under Section 4 of this act, any  
14 entity providing, sponsoring, or administering a self-funded health  
15 benefit plan;

16        ~~2.~~ 6. "Mail-order pharmacy" means a pharmacy licensed by this  
17 state that primarily dispenses and delivers covered drugs via common  
18 carrier;

19        ~~3.~~ 7. "Pharmacy benefits manager" or "PBM" means a person that  
20 performs pharmacy benefits management and any other person acting  
21 for such person under a contractual or employment relationship in  
22 the performance of pharmacy benefits management for a managed-care  
23 company, nonprofit hospital, medical service organization, insurance

24

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

3 ~~4.~~ 8. "Pharmacy and therapeutics committee" or "P&T committee"  
4 means a committee at a hospital or a health insurance plan that  
5 decides which drugs will appear on that entity's drug formulary;

6 9. "Plan sponsor" or "sponsor" means any person or entity  
7 defined in 29 U.S.C., Section 1002(16) (B);

8 10. "Provider" means a pharmacy, as defined in Section 353.1 of  
9 Title 59 of the Oklahoma Statutes;

10 ~~5.~~ 11. "Retail pharmacy network" means retail pharmacy  
11 providers contracted with a PBM in which the pharmacy primarily  
12 fills and sells prescriptions via a retail, storefront location;

13 ~~6.~~ 12. "Rural service area" means a five-digit ZIP code in  
14 which the population density is less than one thousand (1,000)  
15 individuals per square mile;

16 13. "Spread pricing" means a prescription drug pricing model  
17 utilized by a pharmacy benefits manager in which the PBM charges a  
18 health benefit plan a contracted price for prescription drugs that  
19 differs from the amount the PBM directly or indirectly pays the  
20 pharmacy or pharmacist for providing pharmacy services;

21 ~~7.~~ 14. "Suburban service area" means a five-digit ZIP code in  
22 which the population density is between one thousand (1,000) and  
23 three thousand (3,000) individuals per square mile; and  
24

1       ~~8.~~ 15. "Urban service area" means a five-digit ZIP code in  
2 which the population density is greater than three thousand (3,000)  
3 individuals per square mile.

4       SECTION 2.       AMENDATORY       36 O.S. 2021, Section 6962, is  
5 amended to read as follows:

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

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

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

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

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

22       3. Reimburse a pharmacy or pharmacist in the state an amount  
23 less than the amount that the PBM reimburses a pharmacy owned by or  
24 under common ownership with a PBM for providing the same covered

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

5 4. Deny a provider the opportunity to participate in any  
6 pharmacy network at preferred participation status if the ~~pharmacy~~  
7 provider is willing to accept the terms and conditions that the PBM  
8 has established for other ~~pharmacies~~ providers as a condition of  
9 preferred network participation status;

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

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

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

21 ~~or~~

22 7. Fail to make any payment due to a pharmacy or pharmacist for  
23 covered services properly rendered in the event a PBM terminates a  
24

1 ~~pharmacy~~ provider or pharmacist from a pharmacy benefits manager  
2 network; or

3 8. Conduct or practice spread pricing, as defined in Section  
4 6960 of this title, in this state.

5 C. The prohibitions under this section shall apply to contracts  
6 between pharmacy benefits managers and ~~pharmacists or pharmacies~~  
7 providers for participation in retail pharmacy networks.

8 1. A PBM contract shall:

9 a. not restrict, directly or indirectly, any pharmacy  
10 that dispenses a prescription drug from informing, or  
11 penalize such pharmacy for informing, an individual of  
12 any differential between the individual's out-of-  
13 pocket cost or coverage with respect to acquisition of  
14 the drug and the amount an individual would pay to  
15 purchase the drug directly, and

16 b. ensure that any entity that provides pharmacy benefits  
17 management services under a contract with any such  
18 health plan or health insurance coverage does not,  
19 with respect to such plan or coverage, restrict,  
20 directly or indirectly, a pharmacy that dispenses a  
21 prescription drug from informing, or penalize such  
22 pharmacy for informing, a covered individual of any  
23 differential between the individual's out-of-pocket  
24 cost under the plan or coverage with respect to

1 acquisition of the drug and the amount an individual  
2 would pay for acquisition of the drug without using  
3 any health plan or health insurance coverage.

4 2. A pharmacy benefits manager's contract with a ~~participating~~  
5 ~~pharmacist or pharmacy~~ provider shall not prohibit, restrict or  
6 limit disclosure of information to the Insurance Commissioner, law  
7 enforcement or state and federal governmental officials  
8 investigating or examining a complaint or conducting a review of a  
9 pharmacy benefits manager's compliance with the requirements under  
10 the Patient's Right to Pharmacy Choice Act.

11 ~~3. A pharmacy benefits manager shall establish and maintain an~~  
12 ~~electronic claim inquiry processing system using the National~~  
13 ~~Council for Prescription Drug Programs' current standards to~~  
14 ~~communicate information to pharmacies submitting claim inquiries.~~

15 D. A pharmacy benefits manager shall:

16 1. Establish and maintain an electronic claim inquiry  
17 processing system using the National Council for Prescription Drug  
18 Programs' current standards to communicate information to pharmacies  
19 submitting claim inquiries;

20 2. Unless prohibited by a drug manufacturer contract, fully  
21 disclose to insurers, self-funded plans and their sponsors,  
22 administrators, fiduciaries, employers, unions, other PBM clients,  
23 or employer-appointed consultants and/or auditors, with respect to  
24 their specific plans or policies, the existence of any prescription

1 drug discounts, invoice offsets, and any and all direct or indirect  
2 payments, revenues, or soft or hard dollar incentives of any kind to  
3 include, but not be limited to: rebates, administrative fees,  
4 market-shift bonuses, technology fees, consulting or advisory fees,  
5 or pharmacy audit recoupments;

6 3. Unless prohibited by a drug manufacturer contract, provide  
7 insurers, self-funded plans and their sponsors, administrators,  
8 fiduciaries, employers, and unions, with respect to their specific  
9 plans or policies, unrestricted audit rights of and access to PBM  
10 pharmaceutical manufacturer and provider contracts, plan utilization  
11 data, plan pricing data, pharmacy utilization data and pharmacy  
12 pricing data;

13 4. Maintain, for no less than three (3) years, documentation of  
14 all network development activities including, but not limited to,  
15 contract negotiations and any denials to providers to join networks.  
16 This documentation shall be made available to the Insurance  
17 Commissioner upon request;

18 E. Notwithstanding any provisions in the Patient's Right to  
19 Pharmacy Choice Act or any other state law, a pharmacy benefits  
20 manager and a PBM contract may incentivize an individual to utilize  
21 one pharmacy, including mail order, instead of another pharmacy as  
22 it relates to the purchase of any specialty drug. A specialty drug  
23 is a drug that possesses any number of these common attributes:  
24

1       1. Is prescribed for a person with a complex or chronic medical  
2 condition, defined as a physical, behavioral, or developmental  
3 condition that may have no known cure, is progressive, and/or is  
4 debilitating or fatal if left untreated or undertreated;

5       2. Treats rare or orphan disease indications;

6       3. Requires additional patient education, adherence, and  
7 support beyond traditional dispensing activities;

8       4. Is an oral, injectable, inhalable, or infusible drug  
9 product;

10       5. Has a high monthly cost;

11       6. Has unique storage or shipment requirements, such as  
12 refrigeration; and/or

13       7. Is not stocked at a majority of retail pharmacies.

14 Notwithstanding the above, a self-funded plan may decide and  
15 implement its own definition of a specialty drug.

16       SECTION 3.       NEW LAW       A new section of law to be codified  
17 in the Oklahoma Statutes as Section 6966.1 of Title 36, unless there  
18 is created a duplication in numbering, reads as follows:

19       A. The Insurance Commissioner may censure, suspend, revoke, or  
20 refuse to issue or renew a license of or levy a civil penalty  
21 against any person licensed under the insurance laws of this state  
22 for any violation of the Patient's Right to Pharmacy Choice Act,  
23 Section 6958 et seq. of Title 36 of the Oklahoma Statutes.

1 B. 1. If the Commissioner finds, after notice and opportunity  
2 for hearing, that a pharmacy benefits manager (PBM) or pharmacy  
3 violated one or more provisions of the Patient's Right to Pharmacy  
4 Choice Act, the Pharmacy Audit Integrity Act or the provisions of  
5 Sections 357 through 360 of Title 59 of the Oklahoma Statutes, the  
6 PBM or pharmacy may be censured, his or her license may be suspended  
7 or revoked and a penalty or remedy authorized by this act may be  
8 imposed.

9 2. In addition to or in lieu of any censure, suspension, or  
10 revocation of a license, a PBM or pharmacy may be subject to a civil  
11 fine of not less than One Hundred Dollars (\$100.00) and not greater  
12 than Ten Thousand Dollars (\$10,000.00) for each violation of the  
13 provisions of the Patient's Right to Pharmacy Choice Act, the  
14 Pharmacy Audit Integrity Act or the provisions of Sections 357  
15 through 360 of Title 59 of the Oklahoma Statutes, following notice  
16 and an opportunity for a hearing.

17 C. Notwithstanding whether the license of a PBM has been  
18 issued, suspended, revoked, surrendered, or lapsed by operation of  
19 law, the Commissioner is hereby authorized to enforce the provisions  
20 of the Patient's Right to Pharmacy Choice Act and impose any penalty  
21 or remedy authorized under the act against a PBM or pharmacy under  
22 investigation for or charged with a violation of the Patient's Right  
23 to Pharmacy Choice Act, the Pharmacy Audit Integrity Act, the  
24

1 provisions of Sections 357 through 360 of Title 59 of the Oklahoma  
2 Statutes or any provision of the insurance laws of this state.

3 D. Each day that a PBM conducts business in this state without  
4 a license from the Insurance Department shall be deemed a violation  
5 of the Patient's Right to Pharmacy Choice Act.

6 E. 1. All hearings conducted by the Insurance Department  
7 pursuant to this section shall be public and held in accordance with  
8 the Administrative Procedures Act.

9 2. Hearings shall be held at the office of the Insurance  
10 Commissioner or any other place the Commissioner may deem  
11 convenient.

12 3. The Commissioner, upon written request from a PBM affected  
13 by the hearing, shall cause a full stenographic record of the  
14 proceedings to be made by a competent court reporter. This record  
15 shall be at the expense of the PBM.

16 4. The ordinary fees and costs of the hearing examiner  
17 appointed pursuant to Section 319 of Title 36 of the Oklahoma  
18 Statutes may be assessed by the hearing examiner against the  
19 respondent unless the respondent is the prevailing party.

20 F. Any PBM whose license has been censured, suspended, revoked,  
21 or denied renewal or who has had a fine levied against him or her  
22 shall have the right of appeal from the final order of the Insurance  
23 Commissioner, pursuant to Section 318 et seq. of Title 75 of the  
24 Oklahoma Statutes.

1 G. If the Insurance Commissioner determines, based upon an  
2 investigation of complaints, that a PBM has engaged in violations of  
3 the provisions of the Patient's Right to Pharmacy Choice Act with  
4 such frequency as to indicate a general business practice, and that  
5 the PBM should be subjected to closer supervision with respect to  
6 those practices, the Commissioner may require the PBM to file a  
7 report at any periodic interval the Commissioner deems necessary.

8 SECTION 4. NEW LAW A new section of law to be codified  
9 in the Oklahoma Statutes as Section 6966.2 of Title 36, unless there  
10 is created a duplication in numbering, reads as follows:

11 Section 6962 of Title 36 of the Oklahoma Statutes and Section 3  
12 of this act shall not apply to the following:

13 A. Any plan sponsor, administrator, fiduciary, or employee  
14 benefit plan, who is exempt from state regulation under 29 U.S.C.,  
15 Section 1144.

16 B. Any self-funded employee benefit plan as defined by 29  
17 U.S.C., Section 1002(1) and (3).

18 C. Any high deductible plan as defined by 26 U.S.C., Section  
19 220(c)(2) or 223(c)(2).

20 D. Any own use or in-house pharmacy, including but not limited  
21 to a hospital ambulatory pharmacy, inpatient pharmacy, or an  
22 employer-contracted pharmacy operated by a third-party pharmacy on  
23 behalf of an employer for the convenience of its employees.

24 SECTION 5. This act shall become effective July 1, 2022.

1       SECTION 6. It being immediately necessary for the preservation  
2 of the public peace, health or safety, an emergency is hereby  
3 declared to exist, by reason whereof this act shall take effect and  
4 be in full force from and after its passage and approval.

5

6           58-2-9967           MJ           01/12/22

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24