

STATE OF OKLAHOMA

2nd Session of the 59th Legislature (2024)

SENATE BILL 1390

By: McCortney

AS INTRODUCED

An Act relating to pharmacy benefits managers; amending 36 O.S. 2021, Sections 6960, as amended by Section 1, Chapter 38, O.S.L. 2022, 6962, as amended by Section 1, Chapter 293, O.S.L. 2023, 6965, as amended by Section 2, Chapter 293, O.S.L. 2023, Section 3, Chapter 38, O.S.L. 2022, as amended by Section 3, Chapter 293, O.S.L. 2023, and 6967 (36 O.S. Supp. 2023, Sections 6960, 6962, 6965, and 6966.1), which relate to the Patient's Right to Pharmacy Choice Act; defining terms; modifying definitions; prohibiting certain contract terms from restricting document disclosure to certain entities; modifying certain compliance provisions; conforming language; construing provisions; providing for rule promulgation; establishing requirements for disclosure of protected health information; modifying certain fine amount; providing for certain fines and fees; creating the Attorney General's Pharmacy Benefits Manager Enforcement Revolving Fund; establishing fund source; stating purpose; establishing provisions relating to public disclosure of certain report and certain information obtained by the Attorney General; amending 51 O.S. 2021, Section 24A.3, as amended by Section 11, Chapter 271, O.S.L. 2023 (51 O.S. Supp. 2023, Section 24A.3), which relates to the Oklahoma Open Records Act; modifying definition; amending 59 O.S. 2021, Sections 356.1 and 358, which relate to pharmacy benefits managers; providing for rule promulgation; repealing 36 O.S. 2021, Section 6966, which relates to the Patient's Right to Pharmacy Choice Commission; updating statutory reference; updating statutory language; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 36 O.S. 2021, Section 6960, as amended by Section 1, Chapter 38, O.S.L. 2022 (36 O.S. Supp. 2023, Section 6960), is amended to read as follows:

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

1. "Covered entity" means a nonprofit hospital or medical service organization, insurer, health benefit plan, health maintenance organization, health program administered by the state in the capacity of providing health coverage, or an employer, labor union, or other entity organized in the state that provides health coverage to covered individuals who are employed or reside in the state. This term does not include a health plan that provides coverage only for accidental injury, specified disease, hospital indemnity, disability income, or other limited benefit health insurance policies and contracts that do not include prescription drug coverage;

2. "Health insurer" means any corporation, association, benefit society, exchange, partnership or individual licensed by the Oklahoma Insurance Code;

~~2.~~ 3. "Health insurer payor" means a health insurance company, health maintenance organization, union, hospital and medical

1 services organization or any entity providing or administering a
2 self-funded health benefit plan;

3 ~~3.~~ 4. "Mail-order pharmacy" means a pharmacy licensed by this
4 state that primarily dispenses and delivers covered drugs via common
5 carrier;

6 ~~4.~~ 5. "Pharmacy benefits manager" or "PBM" means a person,
7 business, or other entity that performs pharmacy benefits management
8 and any other person acting for such person under. The term shall
9 include a person or entity acting on behalf of a PBM in a
10 contractual or employment relationship in the performance of
11 pharmacy benefits management for a managed-care company, nonprofit
12 hospital, medical service organization, insurance company, third-
13 party payor or a health program administered by a department of this
14 state;

15 6. "Pharmacy benefits management" means a service provided to
16 covered entities to facilitate the provisions of prescription drug
17 benefits to covered individuals within the state, including, but not
18 limited to, negotiating pricing and other terms with drug
19 manufacturers and providers. Pharmacy benefits management may
20 include any or all of the following services:

- 21 a. claims processing, retail network management, and
22 payment of claims to pharmacies for prescription drugs
23 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;

~~5.~~ 7. "Provider" means a pharmacy, as defined in Section 353.1 of Title 59 of the Oklahoma Statutes or an agent or representative of a pharmacy;

~~6.~~ 8. "Retail pharmacy network" means retail pharmacy providers contracted with a PBM in which the pharmacy primarily fills and sells prescriptions via a retail, storefront location;

~~7.~~ 9. "Rural service area" means a five-digit ZIP code in which the population density is less than one thousand (1,000) individuals per square mile;

~~8.~~ 10. "Spread pricing" means a prescription drug pricing model utilized by a pharmacy benefits manager in which the PBM charges a health benefit plan a contracted price for prescription drugs that differs from the amount the PBM directly or indirectly pays the pharmacy or pharmacist for providing pharmacy services;

~~9.~~ 11. "Suburban service area" means a five-digit ZIP code in which the population density is between one thousand (1,000) and three thousand (3,000) individuals per square mile; and

1 ~~10.~~ 12. "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, as
5 amended by Section 1, Chapter 293, O.S.L. 2023 (36 O.S. Supp. 2023,
6 Section 6962), is amended to read as follows:

7 Section 6962. A. The Attorney General shall review and approve
8 retail pharmacy network access for all pharmacy benefits managers
9 (PBMs) to ensure compliance with Section 6961 of 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 provider
7 is willing to accept the terms and conditions that the PBM has
8 established for other providers as a condition of preferred network
9 participation status;

10 5. Deny, limit or terminate a provider's contract based on
11 employment status of any employee who has an active license to
12 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 7. Fail to make any payment due to a pharmacy or pharmacist for
22 covered services properly rendered in the event a PBM terminates a
23 provider from a pharmacy benefits manager network;

1 8. Conduct or practice spread pricing, as defined in ~~Section 1~~
2 ~~of this act~~ Section 6960 of this title, in this state; or

3 9. Charge a pharmacist or pharmacy a fee related to
4 participation in a retail pharmacy network including but not limited
5 to the following:

- 6 a. an application fee,
- 7 b. an enrollment or participation fee,
- 8 c. a credentialing or re-credentialing fee,
- 9 d. a change of ownership fee, or
- 10 e. a fee for the development or management of claims
11 processing services or claims payment services.

12 C. The prohibitions under this section shall apply to contracts
13 between pharmacy benefits managers and providers for participation
14 in retail pharmacy networks.

15 1. A PBM contract shall:

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

1 health plan or health insurance coverage does not,
2 with respect to such plan or coverage, restrict,
3 directly or indirectly, a pharmacy that dispenses a
4 prescription drug from informing, or penalize such
5 pharmacy for informing, a covered individual of any
6 differential between the individual's out-of-pocket
7 cost under the plan or coverage with respect to
8 acquisition of the drug and the amount an individual
9 would pay for acquisition of the drug without using
10 any health plan or health insurance coverage.

11 2. A pharmacy benefits manager's contract with a provider shall
12 not prohibit, restrict or limit disclosure of information and
13 documents to the Attorney General, law enforcement or state and
14 federal governmental officials investigating or examining a
15 complaint or conducting a review of a pharmacy benefits manager's
16 compliance with the requirements under the Patient's Right to
17 Pharmacy Choice Act, Pharmacy Audit Integrity Act, and Section 357
18 et seq. of Title 59 of the Oklahoma Statutes.

19 D. A pharmacy benefits manager shall:

20 1. Establish and maintain an electronic claim inquiry
21 processing system using the National Council for Prescription Drug
22 Programs' current standards to communicate information to pharmacies
23 submitting claim inquiries;

1 2. Fully disclose to insurers, self-funded employers, unions or
2 other PBM clients the existence of the respective aggregate
3 prescription drug discounts, rebates received from drug
4 manufacturers and pharmacy audit recoupments;

5 3. Provide the Attorney General, insurers, self-funded employer
6 plans and unions unrestricted audit rights of and access to the
7 respective PBM pharmaceutical manufacturer and provider contracts,
8 plan utilization data, plan pricing data, pharmacy utilization data
9 and pharmacy pricing data;

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

15 5. Report to the Attorney General, on a quarterly basis for
16 each health insurer payor, on the following information:

- 17 a. the aggregate amount of rebates received by the PBM,
- 18 b. the aggregate amount of rebates distributed to the
19 appropriate health insurer payor,
- 20 c. the aggregate amount of rebates passed on to the
21 enrollees of each health insurer payor at the point of
22 sale that reduced the applicable deductible,
23 copayment, coinsure or other cost sharing amount of
24 the enrollee,

1 d. the individual and aggregate amount paid by the health
2 insurer payor to the PBM for pharmacy services
3 itemized by pharmacy, drug product and service
4 provided, and

5 e. the individual and aggregate amount a PBM paid a
6 provider for pharmacy services itemized by pharmacy,
7 drug product and service provided.

8 E. Nothing in the Patient's Right to Pharmacy Choice Act shall
9 prohibit an employer from incentivizing their employees to use an
10 employer-owned pharmacy; provided, the employee may use another in-
11 network pharmacy of his or her choice.

12 F. Nothing in the Patient's Right to Pharmacy Choice Act shall
13 prohibit the Attorney General from requesting and obtaining detailed
14 data, including raw data, in response to the information provided by
15 a PBM in the quarterly reports required by this section.

16 G. The Attorney General may promulgate rules to implement the
17 provisions of the Patient's Right to Pharmacy Choice Act.

18 SECTION 3. AMENDATORY 36 O.S. 2021, Section 6965, as
19 amended by Section 2, Chapter 293, O.S.L. 2023 (36 O.S. Supp. 2023,
20 Section 6965), is amended to read as follows:

21 Section 6965. A. The Attorney General shall have power and
22 authority to examine and investigate the affairs of every pharmacy
23 benefits manager (PBM) engaged in pharmacy benefits management in
24 this state in order to determine whether such entity is in

1 compliance with the Patient's Right to Pharmacy Choice Act, Pharmacy
2 Audit Integrity Act, and Section 357 et seq. of Title 59 of the
3 Oklahoma Statutes.

4 B. All PBM files and records shall be subject to examination by
5 the Attorney General or by duly appointed designees. The Attorney
6 General, authorized employees and examiners shall have access to any
7 of a PBM's files and records that may relate to a particular
8 complaint under investigation or to an inquiry or examination by the
9 Attorney General.

10 C. Every officer, director, employee or agent of the PBM, upon
11 receipt of any inquiry from the Attorney General shall, within
12 twenty (20) days from the date the inquiry is sent, furnish the
13 Attorney General with an adequate response to the inquiry.

14 D. When making an examination under this section, the Attorney
15 General may retain subject matter experts, attorneys, appraisers,
16 independent actuaries, independent certified public accountants or
17 an accounting firm or individual holding a permit to practice public
18 accounting, certified financial examiners or other professionals and
19 specialists as examiners, the cost of which shall be borne by the
20 PBM that is the subject of the examination.

21 E. 1. Protected health information, or "PHI", held by a PBM
22 shall be provided at the request of the Attorney General for the
23 purpose of conducting investigations into potential violations of
24 state laws and regulations related to the PBM. Disclosure of

1 protected health information shall be limited to the extent
2 necessary for the investigation and enforcement of state law.

3 2. All disclosures of protected health information shall be
4 made in compliance with all applicable federal and state privacy
5 laws, including the Health Insurance Portability and Accountability
6 Act of 1996 (HIPAA), and other relevant laws protecting the privacy
7 and confidentiality of health information.

8 3. Any protected health information obtained for an
9 investigation shall be handled and maintained per applicable federal
10 and state privacy laws and regulations, including HIPAA.

11 4. Unauthorized disclosure of protected health information
12 obtained during an investigation is strictly prohibited and subject
13 to legal penalties.

14 SECTION 4. AMENDATORY Section 3, Chapter 38, O.S.L.
15 2022, as amended by Section 3, Chapter 293, O.S.L. 2023 (36 O.S.
16 Supp. 2023, Section 6966.1), is amended to read as follows:

17 Section 6966.1. A. The Insurance Commissioner may censure,
18 suspend, revoke, or refuse to issue or renew a license of or levy a
19 civil penalty against any person licensed under the insurance laws
20 of this state for any violation of the Patient's Right to Pharmacy
21 Choice Act, Section 6958 et seq. of this title.

22 B. 1. If the Attorney General finds, after notice and
23 opportunity for hearing, that a pharmacy benefits manager (PBM)
24 violated one or more provisions of the Patient's Right to Pharmacy
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1 Choice Act, the Pharmacy Audit Integrity Act or the provisions of
2 Sections 357 through 360 of Title 59 of the Oklahoma Statutes, the
3 Attorney General may ~~recommend~~ instruct the Insurance Commissioner
4 that the PBM be censured, or his or her license may be suspended or
5 revoked and a penalty or remedy authorized by this act may be
6 imposed. If the Attorney General makes such ~~recommendation~~
7 instruction, the Commissioner shall ~~take the recommended action~~
8 enforce such action within thirty (30) days.

9 2. In addition to or in lieu of any censure, suspension or
10 revocation of a license by the Commissioner, a PBM the Attorney
11 General may be subject to levy a civil or administrative fine of not
12 less than One Hundred Dollars (\$100.00) One Thousand Dollars
13 (\$1,000.00) and not greater than Ten Thousand Dollars (\$10,000.00)
14 for each violation of the provisions of the Patient's Right to
15 Pharmacy Choice Act, the Pharmacy Audit Integrity Act or the
16 provisions of Sections 357 through 360 of Title 59 of the Oklahoma
17 Statutes, Statutes. following notice and an opportunity for a hearing
18 For purposes of this subsection, each day that a PBM fails to comply
19 with an investigation or inquiry may be considered a separate
20 violation.

21 3. The Attorney General may order restitution for economic loss
22 suffered by pharmacies or patients for violations of this
23 subsection.

1 C. Notwithstanding whether the license of a PBM has been
2 issued, suspended, revoked, surrendered or lapsed by operation of
3 law, the Attorney General is hereby authorized to enforce the
4 provisions of the Patient's Right to Pharmacy Choice Act and impose
5 any penalty or remedy authorized under the act against a PBM under
6 investigation for or charged with a violation of the Patient's Right
7 to Pharmacy Choice Act, the Pharmacy Audit Integrity Act, the
8 provisions of Sections 357 through 360 of Title 59 of the Oklahoma
9 Statutes or any provision of the insurance laws of this state.

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

13 E. 1. All hearings conducted by the Office of the Attorney
14 General pursuant to this section shall be public and held in
15 accordance with the Administrative Procedures Act.

16 2. Hearings shall be held at the office of the Attorney General
17 or any other place the Attorney General may deem convenient.

18 3. The Attorney General, upon written request from a PBM
19 affected by the hearing, shall cause a full stenographic record of
20 the proceedings to be made by a competent court reporter. This
21 record shall be at the expense of the PBM.

22 4. The ordinary fees and costs of the hearing examiner
23 appointed pursuant to Section 319 of this title may be assessed by
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1 the hearing examiner against the respondent unless the respondent is
2 the prevailing party.

3 F. Any PBM whose license has been censured, suspended, revoked
4 or denied renewal or who has had a fine levied against him or her
5 shall have the right of appeal from the final order of the Attorney
6 General, pursuant to Section 318 et seq. of Title 75 of the Oklahoma
7 Statutes.

8 G. If the Attorney General determines, based upon an
9 investigation of complaints, that a PBM has engaged in violations of
10 the provisions of the Patient's Right to Pharmacy Choice Act,
11 Pharmacy Audit Integrity Act, and Section 357 et seq. of Title 59 of
12 the Oklahoma Statutes with such frequency as to indicate a general
13 business practice, and that the PBM should be subjected to closer
14 supervision with respect to those practices, the Attorney General
15 may require the PBM to file a report at any periodic interval the
16 Attorney General deems necessary.

17 H. 1. The Attorney General shall have the authority to collect
18 all fines, penalties, restitution, and interest thereon pursuant to
19 the provisions of the Patient's Right to Pharmacy Choice Act,
20 Pharmacy Audit Integrity Act, and the provisions of Section 357 et
21 seq. of Title 59 of the Oklahoma Statutes, or any other charge,
22 cause of action, prelitigation settlement, or other settlement that
23 requires the recovery of money as a result of violations of the
24 Patient's Right to Pharmacy Choice Act. Funds collected by the

1 Attorney General pursuant to the Patient's Right to Pharmacy Choice
2 Act shall be deposited into the Attorney General's Pharmacy Benefits
3 Manager Enforcement Revolving Fund.

4 2. Costs of investigation, litigation, attorney fees, and other
5 expenses incurred shall be retained by the Office of the Attorney
6 General. Remaining funds shall be distributed to pharmacists,
7 patients, or other injured parties as determined by the Attorney
8 General.

9 3. The Attorney General shall promulgate rules for the
10 distribution of funds pursuant to this subsection.

11 SECTION 5. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 6966.2 of Title 36, unless there
13 is created a duplication in numbering, reads as follows:

14 There is hereby created in the State Treasury a revolving fund
15 for the Office of the Attorney General, to be designated the
16 "Attorney General's Pharmacy Benefits Manager Enforcement Revolving
17 Fund". The fund shall be a continuing fund, not subject to fiscal
18 year limitations, and shall consist of any monies designated to the
19 fund by law, including those levied for activities related to
20 enforcement of the Patient's Right to Pharmacy Choice Act, the
21 Pharmacy Audit Integrity Act, and the provisions of Sections 357
22 through 360 of Title 59 of the Oklahoma Statutes. All monies
23 accruing to the credit of the fund are hereby appropriated and may
24 be budgeted and expended by the Attorney General for the purposes

1 provided in this section. Expenditures from the fund shall be made
2 upon warrants issued by the State Treasurer against claims filed as
3 prescribed by law with the Director of the Office of Management and
4 Enterprise Services for approval and payment.

5 SECTION 6. AMENDATORY 36 O.S. 2021, Section 6967, is
6 amended to read as follows:

7 Section 6967. A. Documents, evidence, materials, records,
8 reports, complaints or other information in the possession or
9 control of the Attorney General or Insurance Department ~~or the Right~~
10 ~~to Pharmacy Choice Commission~~ that are obtained by, created by or
11 disclosed to the Attorney General or Insurance Commissioner,
12 ~~Pharmacy Choice Commission~~ or any other person in the course of an
13 evaluation, examination, investigation or review made pursuant to
14 the provisions of the Patient's Right to Pharmacy Choice Act, the
15 Pharmacy ~~Integrity~~ Audit Integrity Act or Sections 357 through 360
16 of Title 59 of the Oklahoma Statutes, except as provided in
17 subsection C of this section, shall be confidential by law and
18 privileged, shall not be subject to open records request, shall not
19 be subject to subpoena and shall not be subject to discovery or
20 admissible in evidence in any private civil action if obtained from
21 the Attorney General, Insurance Commissioner, ~~the Pharmacy Choice~~
22 ~~Commission~~ or any employees or representatives of the Attorney
23 General or Insurance Commissioner.

1 B. Nothing in this section shall prevent the disclosure of a
2 final order issued against a pharmacy benefits manager by the
3 Insurance Commissioner ~~or Pharmacy Choice Commission~~. Such orders
4 shall be open records.

5 C. Nothing in this section shall prevent the Attorney General
6 from making public, in the form of an examination report, any
7 findings from an examination pursuant to Section 6965 of this title.
8 It shall be the Attorney General's sole discretion to determine
9 whether it is in the public's interest to publish these findings.
10 Only the final examination report shall be made public. Any
11 documents, evidence, materials, records, reports, complaints, or
12 other information in possession or control of the Attorney General
13 obtained through the examination shall be confidential by law and
14 privileged, shall not be subject to the Oklahoma Open Records Act,
15 shall not be subject to subpoena, and shall not be subject to
16 discovery or admissible evidence in any private civil action if
17 obtained from the Attorney General.

18 D. In the course of any hearing made pursuant to the provisions
19 of the Patient's Right to Pharmacy Choice Act, the Pharmacy
20 Integrity Audit Act or Sections 357 through 360 of Title 59 of the
21 Oklahoma Statutes, nothing in this section shall be construed to
22 prevent the Insurance Commissioner or any employees or
23 representatives of the Insurance Commissioner from presenting
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1 admissible documents, evidence, materials, records, reports or
2 complaints to the adjudicating authority.

3 SECTION 7. AMENDATORY 51 O.S. 2021, Section 24A.3, as
4 amended by Section 11, Chapter 271, O.S.L. 2023 (51 O.S. Supp. 2023,
5 Section 24A.3), is amended to read as follows:

6 Section 24A.3. As used in the Oklahoma Open Records Act:

7 1. "Record" means all documents including, but not limited to,
8 any book, paper, photograph, microfilm, data files created by or
9 used with computer software, computer tape, disk, record, sound
10 recording, film recording, video record or other material regardless
11 of physical form or characteristic, created by, received by, under
12 the authority of, or coming into the custody, control or possession
13 of public officials, public bodies or their representatives in
14 connection with the transaction of public business, the expenditure
15 of public funds or the administering of public property. Record
16 does not mean:

- 17 a. computer software,
- 18 b. nongovernment personal effects,
- 19 c. unless public disclosure is required by other laws or
20 regulations, vehicle movement records of the Oklahoma
21 Transportation Authority obtained in connection with
22 the Authority's electronic toll collection system,
- 23 d. personal financial information, credit reports or
24 other financial data obtained by or submitted to a
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1 public body for the purpose of evaluating credit
2 worthiness, obtaining a license, permit or for the
3 purpose of becoming qualified to contract with a
4 public body,

5 e. any digital audio/video recordings of the toll
6 collection and safeguarding activities of the Oklahoma
7 Transportation Authority,

8 f. any personal information provided by a guest at any
9 facility owned or operated by the Oklahoma Tourism and
10 Recreation Department to obtain any service at the
11 facility or by a purchaser of a product sold by or
12 through the Oklahoma Tourism and Recreation
13 Department,

14 g. a Department of Defense Form 214 (DD Form 214) filed
15 with a county clerk including any DD Form 214 filed
16 before July 1, 2002,

17 h. except as provided for in Section 2-110 of Title 47 of
18 the Oklahoma Statutes:

19 (1) any record in connection with a Motor Vehicle
20 Report issued by the Department of Public Safety,
21 as prescribed in Section 6-117 of Title 47 of the
22 Oklahoma Statutes, or

23 (2) personal information within driver records, as
24 defined by the Driver's Privacy Protection Act,

1 18 United States Code, Sections 2721 through
2 2725, which are stored and maintained by the
3 Department of Public Safety,

- 4 i. any portion of any document or information provided to
5 an agency or entity of the state or a political
6 subdivision to obtain licensure under the laws of this
7 state or a political subdivision that contains an
8 applicant's personal address, personal phone number,
9 personal electronic mail address or other contact
10 information. Provided, however, lists of persons
11 licensed, the existence of a license of a person, or a
12 business or commercial address, or other business or
13 commercial information disclosable under state law
14 submitted with an application for licensure shall be
15 public record, ~~or~~
- 16 j. an investigative file obtained during an investigation
17 conducted by the State Department of Health under ~~this~~
18 ~~act~~ the Oklahoma Open Records Act, or
- 19 k. information deemed confidential pursuant to the
20 provisions of the Patient's Right to Pharmacy Choice
21 Act;

22 2. "Public body" shall include, but not be limited to, any
23 office, department, board, bureau, commission, agency, trusteeship,
24 authority, council, committee, trust or any entity created by a

1 trust, county, city, village, town, township, district, school
2 district, fair board, court, executive office, advisory group, task
3 force, study group or any subdivision thereof, supported in whole or
4 in part by public funds or entrusted with the expenditure of public
5 funds or administering or operating public property, and all
6 committees, or subcommittees thereof. Except for the records
7 required by Section 24A.4 of this title, public body does not mean
8 judges, justices, the Council on Judicial Complaints, the
9 Legislature or legislators. Public body shall not include an
10 organization that is exempt from federal income tax under Section
11 501(c)(3) of the Internal Revenue Code of 1986, as amended, and
12 whose sole beneficiary is a college or university, or an affiliated
13 entity of the college or university, that is a member of The
14 Oklahoma State System of Higher Education. Such organization shall
15 not receive direct appropriations from the ~~Oklahoma~~ Legislature.
16 The following persons shall not be eligible to serve as a voting
17 member of the governing board of the organization:

- 18 a. a member, officer, or employee of the Oklahoma State
19 Regents for Higher Education,
- 20 b. a member of the board of regents or other governing
21 board of the college or university that is the sole
22 beneficiary of the organization, or
- 23 c. an officer or employee of the college or university
24 that is the sole beneficiary of the organization;

1 3. "Public office" means the physical location where public
2 bodies conduct business or keep records;

3 4. "Public official" means any official or employee of any
4 public body as defined herein; and

5 5. "Law enforcement agency" means any public body charged with
6 enforcing state or local criminal laws and initiating criminal
7 prosecutions including, but not limited to, police departments,
8 county sheriffs, the Department of Public Safety, the Oklahoma State
9 Bureau of Narcotics and Dangerous Drugs Control, the Alcoholic
10 Beverage Laws Enforcement Commission, and the Oklahoma State Bureau
11 of Investigation.

12 SECTION 8. AMENDATORY 59 O.S. 2021, Section 356.1, is
13 amended to read as follows:

14 Section 356.1. A. For purposes of the Pharmacy Audit Integrity
15 Act, "pharmacy benefits manager" or "PBM" means a person, business,
16 or other entity that performs pharmacy benefits management. The
17 term includes a person or entity acting for a PBM in a contractual
18 or employment relationship in the performance of pharmacy benefits
19 management for a managed care company, nonprofit hospital, medical
20 service organization, insurance company, third-party payor, or a
21 health program administered by a department of this state.

22 B. The purpose of the Pharmacy Audit Integrity Act is to
23 establish minimum and uniform standards and criteria for the audit
24 of pharmacy records by or on behalf of certain entities.

1 C. The Pharmacy Audit Integrity Act shall apply to any audit of
2 the records of a pharmacy conducted by a managed care company,
3 nonprofit hospital, medical service organization, insurance company,
4 third-party payor, pharmacy benefits manager, a health program
5 administered by a department of this state, or any entity that
6 represents these companies, groups, or departments.

7 D. The Attorney General may promulgate rules to implement the
8 provisions of the Pharmacy Audit Integrity Act.

9 SECTION 9. AMENDATORY 59 O.S. 2021, Section 358, is
10 amended to read as follows:

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

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

3 C. The Department may subpoena witnesses and information. Its
4 compliance officers may take and copy records for investigative use
5 and prosecutions. Nothing in this subsection shall limit the Office
6 of the Attorney General from using its investigative demand
7 authority to investigate and prosecute violations of the law.

8 D. The Department may suspend, revoke or refuse to issue or
9 renew a license for noncompliance with any of the provisions hereby
10 established or with the rules promulgated by the Department; for
11 conduct likely to mislead, deceive or defraud the public or the
12 Department; for unfair or deceptive business practices or for
13 nonpayment of a renewal fee or fine. The Department may also levy
14 administrative fines for each count of which a PBM has been
15 convicted in a Department hearing.

16 E. The Attorney General may promulgate rules to implement the
17 provisions of Sections 357 et seq. of this title.

18 SECTION 10. REPEALER 36 O.S. 2021, Section 6966, is
19 hereby repealed.

20 SECTION 11. This act shall become effective November 1, 2024.

22 59-2-2558 RD 12/15/2023 1:57:11 PM