

1 ENGROSSED SENATE
2 BILL NO. 1670

By: McCortney, Prieto, Jett,
Coleman, Hamilton, and
Alvord of the Senate

3
4 and

5 McEntire of the House

6
7 [pharmacy benefits management - pharmacy
8 reimbursement - rule promulgation - audit - notice
and reporting - fines and fees - recouped funds -
9 emergency]

10

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

12 SECTION 1. 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 2. AMENDATORY 59 O.S. 2021, Section 356.2, is
10 amended to read as follows:

11 Section 356.2. A. The entity conducting an audit of a pharmacy
12 shall:

13 1. Identify and specifically describe the audit and appeal
14 procedures in the pharmacy contract. Prescription claim
15 documentation and record-keeping requirements shall not exceed the
16 requirements set forth by the Oklahoma Pharmacy Act or other
17 applicable state or federal laws or regulations;

18 2. Give the pharmacy written notice by certified letter to the
19 pharmacy and the pharmacy's contracting agent, including
20 identification of specific prescription numbers and fill dates to be
21 audited, at least ~~two (2) weeks~~ fourteen (14) calendar days prior to
22 conducting the audit, including, but not limited to, an on-site
23 audit, a desk audit, or a wholesale purchase audit, request for
24 documentation related to the dispensing of a prescription drug or

1 any reimbursed activity by a pharmacy provider; provided, however,
2 that wholesale purchase audits shall require a minimum of thirty
3 (30) calendar days' written notice. For an on-site audit, the audit
4 date shall be the date the on-site audit occurs. For all other
5 audit types, the audit date shall be the date the pharmacy provides
6 the documentation requested in the audit notice. The pharmacy shall
7 have the opportunity to reschedule the audit no more than seven (7)
8 calendar days from the date designated on the original audit
9 notification;

10 3. Not interfere with the delivery of pharmacist services to a
11 patient and shall utilize every reasonable effort to minimize
12 inconvenience and disruption to pharmacy operations during the audit
13 process;

14 4. Conduct any audit involving clinical or professional
15 judgment by means of or in consultation with a licensed pharmacist;

16 5. Not consider as fraud any clerical or record-keeping error,
17 such as a typographical error, scrivener's error or computer error,
18 including, but not limited to, a miscalculated day supply,
19 incorrectly billed prescription written date or prescription origin
20 code, and such errors shall not be subject to recoupment. The
21 pharmacy shall have the right to submit amended claims
22 electronically to correct clerical or record-keeping errors in lieu
23 of recoupment. To the extent that an audit results in the
24 identification of any clerical or record-keeping errors such as

1 typographical errors, scrivener's errors or computer errors in a
2 required document or record, the pharmacy shall not be subject to
3 recoupment of funds by the pharmacy benefits manager unless the
4 pharmacy benefits manager can provide proof of intent to commit
5 fraud. A person shall not be subject to criminal penalties for
6 errors provided for in this paragraph without proof of intent to
7 commit fraud;

8 6. Permit a pharmacy to use the records of a hospital,
9 physician, or other authorized practitioner of the healing arts for
10 drugs or medicinal supplies written or transmitted by any means of
11 communication for purposes of validating the pharmacy record with
12 respect to orders or refills of a legend or narcotic drug;

13 7. Not include the dispensing fee amount or the actual invoice
14 cost of the prescription dispensed in a finding of an audit
15 recoupment unless a prescription was not actually dispensed or a
16 physician denied authorization of a dispensing order;

17 8. Audit each pharmacy under identical standards, regularity
18 and parameters as other similarly situated pharmacies and all
19 pharmacies owned or managed by the pharmacy benefits manager
20 conducting or having conducted the audit;

21 9. Not exceed one (1) year from the date the claim was
22 submitted to or adjudicated by a managed care company, nonprofit
23 hospital or medical service organization, insurance company, third-
24 party payor, pharmacy benefits manager, a health program

1 administered by a department of this state, or any entity that
2 represents the companies, groups, or departments for the period
3 covered by an audit;

4 10. Not schedule or initiate an audit during the first seven
5 (7) calendar days of any month unless otherwise consented to by the
6 pharmacy;

7 11. Disclose to any plan sponsor whose claims were included in
8 the audit any money recouped in the audit; ~~and~~

9 12. Not require pharmacists to break open packaging labeled
10 "for single-patient-use only". Packaging labeled "for single-
11 patient-use only" shall be deemed to be the smallest package size
12 available; and

13 13. Upon recoupment of funds from a pharmacy, refund first to
14 the patient the portion of the recovered funds that were originally
15 paid by the patient.

16 B. 1. Any entity that conducts wholesale purchase review
17 during an audit of a pharmacist or pharmacy shall not require the
18 pharmacist or pharmacy to provide a full dispensing report.
19 Wholesaler invoice reviews shall be limited to verification of
20 purchase inventory specific to the pharmacy claims paid by the
21 health benefits plan or pharmacy benefits manager conducting the
22 audit.

23 2. Any entity conducting an audit shall not identify or label a
24 prescription claim as an audit discrepancy when:

- a. the National Drug Code for the dispensed drug is in a quantity that is a subunit or multiple of the drug purchased by the pharmacist or pharmacy as supported by a wholesale invoice,
- b. the pharmacist or pharmacy dispensed the correct quantity of the drug according to the prescription, and
- c. the drug dispensed by the pharmacist or pharmacy shares all but the last two digits of the National Drug Code of the drug reflected on the supplier invoice.

3. An entity conducting an audit shall accept as evidence, subject to validation, to support the validity of a pharmacy claim related to a dispensed drug:

- a. redacted copies of supplier invoices in the pharmacist's or pharmacy's possession, or
- b. invoices and any supporting documents from any supplier as authorized by federal or state law to transfer ownership of the drug acquired by the pharmacist or pharmacy.

4. An entity conducting an audit shall provide, no later than five (5) business days after the date of a request by the pharmacist or pharmacy, all supporting documents the pharmacist's or pharmacy's

1 purchase suppliers provided to the health benefits plan issuer or
2 pharmacy benefits manager.

3 C. A pharmacy shall be allowed to provide the pharmacy's
4 computerized patterned medical records or the records of a hospital,
5 physician, or other authorized practitioner of the healing arts for
6 drugs or medicinal supplies written or transmitted by any means of
7 communication for purposes of supporting the pharmacy record with
8 respect to orders or refills of a legend or narcotic drug.

9 D. The entity conducting the audit shall not audit more than
10 fifty prescriptions, with specific date of service, per calendar
11 year. The annual limit to the number of prescription claims audited
12 shall be inclusive of all audits, including any prescription-related
13 documentation requests from the health insurer, pharmacy benefits
14 manager or any third-party company conducting audits on behalf of
15 any health insurer or pharmacy benefits manager during a calendar
16 year.

17 E. If paper copies of records are requested by the entity
18 conducting the audit, the entity shall pay twenty-five cents (\$0.25)
19 per page to cover the costs incurred by the pharmacy. The entity
20 conducting the audit shall provide the pharmacy with accurate
21 instructions, including any required form for obtaining
22 reimbursement for the copied records.

23 F. The entity conducting the audit shall:
24

- 1 1. Deliver a preliminary audit findings report to the pharmacy
2 and the pharmacy's contracting agent within forty-five (45) calendar
3 days of conducting the audit;
- 4 2. Allow the pharmacy at least ninety (90) calendar days
5 following receipt of the preliminary audit findings report in which
6 to produce documentation to address any discrepancy found during the
7 audit; provided, however, a pharmacy may request an extension, not
8 to exceed an additional forty-five (45) calendar days;
- 9 3. Deliver a final audit findings report to the pharmacy and
10 the pharmacy's contracting agent signed by the auditor within ten
11 (10) calendar days after receipt of additional documentation
12 provided by the pharmacy, as provided for in Section 356.3 of this
13 title;
- 14 4. Allow the pharmacy to reverse and resubmit claims
15 electronically within thirty (30) days of receipt of the final audit
16 report in lieu of the auditing entity recouping discrepant claim
17 amounts from the pharmacy;
- 18 5. Not recoup any disputed funds until after final disposition
19 of the audit findings, including the appeals process as provided for
20 in Section 356.3 of this title; and
- 21 6. Not accrue interest during the audit and appeal period.
- 22 G. Each entity conducting an audit shall provide a copy of the
23 final audit results, and a final audit report upon request, after
24 completion of any review process to the plan sponsor.

1 H. 1. The full amount of any recoupment on an audit shall be
2 refunded to the plan sponsor. Except as provided for in paragraph 2
3 of this subsection, a charge or assessment for an audit shall not be
4 based, directly or indirectly, on amounts recouped.

5 2. This subsection does not prevent the entity conducting the
6 audit from charging or assessing the responsible party, directly or
7 indirectly, based on amounts recouped if both of the following
8 conditions are met:

- 9 a. the plan sponsor and the entity conducting the audit
10 have a contract that explicitly states the percentage
11 charge or assessment to the plan sponsor, and
12 b. a commission to an agent or employee of the entity
13 conducting the audit is not based, directly or
14 indirectly, on amounts recouped.

15 I. Unless superseded by state or federal law, auditors shall
16 only have access to previous audit reports on a particular pharmacy
17 conducted by the auditing entity for the same pharmacy benefits
18 manager, health plan or insurer. An auditing vendor contracting
19 with multiple pharmacy benefits managers or health insurance plans
20 shall not use audit reports or other information gained from an
21 audit on a pharmacy to conduct another audit for a different
22 pharmacy benefits manager or health insurance plan.

23 J. An audit shall be considered null and void if the entity
24 conducting the audit fails to follow any of the requirements under

1 this section. Any violation of this section by a pharmacy benefits
2 manager or auditing entity shall be deemed a violation of the
3 Pharmacy Audit Integrity Act.

4 SECTION 3. AMENDATORY 59 O.S. 2021, Section 356.3, is
5 amended to read as follows:

6 Section 356.3. A. Each entity conducting an audit shall
7 establish a written appeals process under which a pharmacy may
8 appeal an unfavorable preliminary audit report and/or final audit
9 report to the entity.

10 B. Following an appeal, if the entity finds that an unfavorable
11 audit report or any portion thereof is unsubstantiated, the entity
12 shall dismiss the audit report or the unsubstantiated portion of the
13 audit report without any further action.

14 C. Any final audit report, following the final audit appeal
15 period, with a finding of fraud or willful misrepresentation shall
16 be referred to the district attorney having proper jurisdiction or
17 the Attorney General for prosecution upon completion of the appeals
18 process.

19 D. This ~~act does~~ section and Section 356.2 of this title do not
20 apply to any audit, ~~review or investigation~~ that is initiated based
21 on or that involves fraud, willful misrepresentation or abuse so
22 long as the auditing entity provides in writing at the time of the
23 audit, a clear and conspicuous declaration that the audit is being
24 conducted under suspicion of fraud, willful misrepresentation, or

1 abuse and a statement of facts that supports the reasonable
2 suspicion. Any monies recouped from a null and void audit shall be
3 returned to the affected pharmacy within fourteen (14) calendar
4 days.

5 E. Any entity conducting an audit based on or that involves
6 fraud, willful misrepresentation, or abuse shall provide to the
7 Office of the Attorney General:

8 1. Notice at least two (2) business days prior to beginning
9 performance of an audit under this section;

10 2. A preliminary report within thirty (30) days of performing
11 the audit; and

12 3. A final report within thirty (30) days following the closure
13 of the final audit appeal period.

14 F. The Attorney General shall have unrestricted access to any
15 documents relevant to an audit that is based on or that involves
16 fraud, willful misrepresentation, or abuse.

17 G. The Attorney General may levy a civil or administrative fine
18 not less than One Hundred Dollars (\$100.00) and not greater than Ten
19 Thousand Dollars (\$10,000.00) for each violation of this section and
20 assess any other penalty or remedy authorized by law.

21 SECTION 4. AMENDATORY 59 O.S. 2021, Section 357, is
22 amended to read as follows:

23 Section 357. As used in this act section through Section 360 of
24 this title:

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

13 2. "Covered individual" means a member, participant, enrollee,
14 contract holder or policy holder or beneficiary of a covered entity
15 who is provided health coverage by the covered entity. A covered
16 individual includes any dependent or other person provided health
17 coverage through a policy, contract or plan for a covered
18 individual;

19 3. "Department" means the ~~Oklahoma~~ Insurance Department;

20 4. "Maximum allowable cost", or "MAC", or "MAC list" means the
21 list of drug products delineating the maximum per-unit reimbursement
22 for multiple-source prescription drugs, medical product products, or
23 device devices including, but not limited to:

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- a. average acquisition cost, including the national drug acquisition cost,
- b. average manufacturer price,
- c. average wholesale price,
- d. brand effective rate or generic effective rate,
- e. discount indexing,
- f. federal upper limits,
- g. wholesale acquisition cost, and
- h. any other term that a pharmacy benefits manager or an insurer of a health benefit plan may use to establish reimbursement rates to a pharmacist or pharmacy for pharmacist services;

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

6. "Office" means the Office of the Attorney General;

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

- 1 a. claims processing, retail network management and
2 payment of claims to pharmacies for prescription drugs
3 dispensed to covered individuals,
4 b. administration or management of pharmacy discount
5 cards or programs,
6 c. clinical formulary development and management
7 services,
8 ~~e.~~ d. rebate contracting and administration,
9 ~~d.~~ e. certain patient compliance, therapeutic intervention
10 and generic substitution programs, ~~e~~
11 ~~e.~~ f. administration or management of mail-order pharmacy
12 programs, or
13 g. disease management programs;

14 ~~7.~~ 8. "Pharmacy benefits manager" or "PBM" means a person,
15 business, or other entity that performs pharmacy benefits
16 management. The term ~~includes~~ shall include a person or entity
17 acting ~~for~~ on behalf of a PBM in a contractual or employment
18 relationship in the performance of pharmacy benefits management for
19 a managed care company, nonprofit hospital, medical service
20 organization, insurance company, third-party payor, or a health
21 program administered by an agency or department of this state;

22 ~~8.~~ 9. "Plan sponsor" means the employers, insurance companies,
23 unions and health maintenance organizations or any other entity
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1 responsible for establishing, maintaining, or administering a health
2 benefit plan on behalf of covered individuals; and

3 ~~9.~~ 10. "Provider" means a pharmacy licensed by the State Board
4 of Pharmacy, or an agent or representative of a pharmacy, including,
5 but not limited to, the pharmacy's contracting agent, which
6 dispenses prescription drugs or devices to covered individuals.

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

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

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

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

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

14 E. The Attorney General may promulgate rules to implement the
15 provisions of Sections 357 through 360 of this title.

16 SECTION 6. AMENDATORY 59 O.S. 2021, Section 360, is
17 amended to read as follows:

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

21 1. Include in such contracts the specific sources utilized to
22 determine the maximum allowable cost (MAC) pricing of the pharmacy,
23 update MAC pricing at least every seven (7) calendar days, and
24

1 establish a process for providers to readily access the MAC list
2 specific to that provider;

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

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

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

1 organization to log into a system to upload individual claim appeals
2 or to download individual appeal responses. If a price update is
3 warranted, the pharmacy benefits manager shall make the change in
4 the reimbursement amount, permit the dispensing pharmacy to reverse
5 and rebill the claim in question, and make the reimbursement amount
6 change retroactive and effective for all contracted providers; and

7 5. If a below-cost reimbursement appeal is denied, the PBM
8 shall provide the reason for the denial, including the National Drug
9 Code (NDC) number from and the name of the specific national or
10 regional wholesalers doing business in this state where the drug is
11 currently in stock and available for purchase by the dispensing
12 pharmacy at a price below the PBM's reimbursement price. ~~If the~~
13 ~~pharmacy benefits manager cannot provide a specific national or~~
14 ~~regional wholesaler where the drug can be purchased by the~~
15 ~~dispensing pharmacy at a price below the pharmacy benefits manager's~~
16 ~~reimbursement price~~ If the NDC number provided by the pharmacy
17 benefits manager is not available below the acquisition cost
18 obtained from the pharmaceutical wholesaler from whom the dispensing
19 pharmacy purchases the majority of the prescription drugs that are
20 dispensed, the pharmacy benefits manager shall immediately adjust
21 the reimbursement amount, permit the dispensing pharmacy to reverse
22 and rebill the claim in question, and make the reimbursement amount
23 adjustment retroactive and effective for all contracted providers.

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1 B. The pharmacy benefits manager shall not place a drug on a
2 MAC list, unless there are at least two therapeutically equivalent,
3 multiple-source drugs, generally available for purchase by
4 dispensing retail pharmacies from national or regional wholesalers.

5 C. In the event that a drug is placed on the FDA Drug Shortages
6 Database, pharmacy benefits managers shall reimburse claims to
7 pharmacies at no less than the wholesale acquisition cost for the
8 specific NDC number being dispensed.

9 D. The pharmacy benefits manager shall not require
10 accreditation or licensing of providers, or any entity licensed or
11 regulated by the State Board of Pharmacy, other than by the State
12 Board of Pharmacy or federal government entity as a condition for
13 participation as a network provider.

14 ~~D.~~ E. A pharmacy or pharmacist may decline to provide the
15 pharmacist clinical or dispensing services to a patient or pharmacy
16 benefits manager if the pharmacy or pharmacist is to be paid less
17 than the pharmacy's cost for providing the pharmacist clinical or
18 dispensing services.

19 ~~E.~~ F. The pharmacy benefits manager shall provide a dedicated
20 telephone number, email address and names of the personnel with
21 decision-making authority regarding MAC appeals and pricing.

22 SECTION 7. It being immediately necessary for the preservation
23 of the public peace, health or safety, an emergency is hereby
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1 declared to exist, by reason whereof this act shall take effect and
2 be in full force from and after its passage and approval.

3 Passed the Senate the 12th day of March, 2024.

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Presiding Officer of the Senate

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7 Passed the House of Representatives the ____ day of _____,

8 2024.

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Presiding Officer of the House
of Representatives

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