

1 **SENATE FLOOR VERSION**

2 February 21, 2023

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 549

By: Montgomery of the Senate

and

Sneed of the House

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7
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9 [pharmacy benefits management - hearings -
10 submission means - violation - contracts - allowable
11 cost - effective date]
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14 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

15 SECTION 1. AMENDATORY 36 O.S. 2021, Section 319, is
16 amended to read as follows:

17 Section 319. A. In conducting any hearing pursuant to the
18 Oklahoma Insurance Code, the Insurance Commissioner may appoint an
19 independent hearing examiner who shall sit as a quasi-judicial
20 officer. The ordinary fees and costs of such hearing examiner shall
21 be assessed by the hearing examiner against the respondent, unless
22 the respondent is the prevailing party. Within thirty (30) days
23 after termination of the hearing or of any rehearing thereof or
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1 reargument thereon, unless such time is extended by stipulation, a
2 final order shall be issued.

3 B. 1. The Patient's Right to Pharmacy Choice Commission
4 ~~established pursuant to Section 10 of this act shall conduct any~~
5 ~~hearing pursuant to the Patient's Right to Pharmacy Choice Act or~~
6 ~~relating to the oversight of pharmacy benefits managers pursuant to~~
7 ~~the Pharmacy Audit Integrity Act and Sections 357 through 360 of~~
8 ~~Title 59 of the Oklahoma Statutes~~ hearings in accordance with
9 Section 6966 of this title. Within thirty (30) days after
10 termination of a hearing or of any rehearing thereof or reargument
11 thereon, unless such time is extended by stipulation, a final order
12 shall be issued.

13 2. The Pharmacy Choice Commission members shall not be entitled
14 to receive any compensation related to conducting a hearing pursuant
15 to this section including per diem or mileage for any travel or
16 expenses related to appointment on the Commission.

17 SECTION 2. AMENDATORY 36 O.S. 2021, Section 6960, as
18 amended by Section 1, Chapter 38, O.S.L. 2022 (36 O.S. Supp. 2022,
19 Section 6960), is amended to read as follows:

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

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

1 2. "Health insurer payor" means a health insurance company,
2 health maintenance organization, union, hospital and medical
3 services organization or any entity providing or administering a
4 self-funded health benefit plan;

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

8 4. "Pharmacy benefits manager" or "PBM" means a person,
9 business, or entity that performs pharmacy benefits management, as
10 defined pursuant to Section 357 of Title 59 of the Oklahoma
11 Statutes, and any other person, business, or entity acting for ~~such~~
12 ~~person~~ the PBM under a contractual or employment relationship in the
13 performance of pharmacy benefits management for a ~~managed-care~~
14 ~~company, nonprofit hospital, medical service organization, insurance~~
15 ~~company, third-party payor or a health program administered by a~~
16 ~~department of this state~~ provider or covered entity, as defined by
17 Section 357 of Title 59 of the Oklahoma Statutes;

18 5. "Provider" means a pharmacy⁷ as defined in Section 353.1 of
19 Title 59 of the Oklahoma Statutes or an agent or representative of a
20 pharmacy;

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

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

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

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

12 10. "Urban service area" means a five-digit ZIP code in which
13 the population density is greater than three thousand (3,000)
14 individuals per square mile.

15 SECTION 3. AMENDATORY 36 O.S. 2021, Section 6962, as
16 amended by Section 2, Chapter 38, O.S.L. 2022 (36 O.S. Supp. 2022,
17 Section 6962), is amended to read as follows:

18 Section 6962. A. The ~~Oklahoma~~ Insurance Department shall
19 review and approve retail pharmacy network access for all pharmacy
20 benefits managers (PBMs) to ensure compliance with Section 6961 of
21 this title.

22 1. On a semi-annual basis, each health insurer payor that
23 utilizes the services of a PBM that is licensed in this state and
24 each PBM licensed in this state shall electronically submit a

1 network adequacy audit and any transaction or applicable fees to the
2 Department in the manner and form prescribed by the Insurance
3 Commissioner.

4 2. Each calendar day in a single 5-digit postal code where a
5 PBM or insurer has failed to comply with the provisions of Section
6 6961 et seq. of this title shall be deemed an instance of violation.

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

8 1. Cause or knowingly permit the use of advertisement,
9 promotion, solicitation, representation, proposal or offer that is
10 untrue, deceptive or misleading;

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

13 a. the submission of a claim,

14 b. enrollment or participation in a retail pharmacy
15 network, or

16 c. the development or management of claims processing
17 services or claims payment services related to
18 participation in a retail pharmacy network;

19 3. Reimburse a pharmacy or pharmacist in the state an amount
20 less than the amount that the PBM reimburses a pharmacy owned by or
21 under common ownership with a PBM for providing the same covered
22 services. The reimbursement amount paid to the pharmacy shall be
23 equal to the reimbursement amount calculated on a per-unit basis

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1 using the same generic product identifier or generic code number
2 paid to the PBM-owned or PBM-affiliated pharmacy;

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

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

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

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

19 7. Fail to make any payment due to a pharmacy or pharmacist for
20 covered services properly rendered in the event a PBM terminates a
21 provider from a pharmacy benefits manager network;

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

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

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

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

13 1. A PBM contract shall:

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

1 directly or indirectly, a pharmacy that dispenses a
2 prescription drug from informing, or penalize such
3 pharmacy for informing, a covered individual of any
4 differential between the individual's out-of-pocket
5 cost under the plan or coverage with respect to
6 acquisition of the drug and the amount an individual
7 would pay for acquisition of the drug without using
8 any health plan or health insurance coverage,

9 c. not be amended or modified unilaterally by any party
10 to the original or subsequent contract without
11 providing proper notice to all other parties to the
12 contract and agreement to the changes by all parties
13 to the contract. Agreement shall be evidenced by the
14 signature of a party to the contract affixed to the
15 amendment or modification, and

16 d. not be unilaterally canceled by any party to a
17 contract on or before the date of renewal without
18 providing proper notice to all other parties to the
19 contract.

20 2. A pharmacy benefits manager's contract with a provider shall
21 not prohibit, restrict or limit disclosure of information to the
22 Insurance Commissioner, law enforcement or state and federal
23 governmental officials investigating or examining a complaint or
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1 conducting a review of a pharmacy benefits manager's compliance with
2 the requirements under the Patient's Right to Pharmacy Choice Act.

3 D. A pharmacy benefits manager shall:

4 1. Establish and maintain an electronic claim inquiry
5 processing system using the National Council for Prescription Drug
6 Programs' current standards to communicate information to pharmacies
7 submitting claim inquiries;

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

12 3. Provide the Insurance Commissioner, insurers, self-funded
13 employer plans and unions unrestricted audit rights of and access to
14 the respective PBM pharmaceutical manufacturer and provider
15 contracts, plan utilization data, plan pricing data, pharmacy
16 utilization data and pharmacy pricing data;

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

22 5. Report to the Commissioner, on a quarterly basis for each
23 health insurer payor, in the manner and form prescribed by the
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1 Commissioner, along with any applicable fees, on the following
2 information:

3 a. the aggregate amount of rebates received by the PBM,

4 b. the aggregate amount of rebates distributed to the
5 appropriate health insurer payor,

6 c. the aggregate amount of rebates passed on to the
7 enrollees of each health insurer payor at the point of
8 sale that reduced the applicable deductible,
9 copayment, coinsure or other cost sharing amount of
10 the enrollee,

11 d. the individual and aggregate amount paid by the health
12 insurer payor to the PBM for pharmacy services
13 itemized by pharmacy, drug product and service
14 provided, and

15 e. the individual and aggregate amount a PBM paid a
16 provider for pharmacy services itemized by pharmacy,
17 drug product and service provided.

18 SECTION 4. AMENDATORY 36 O.S. 2021, Section 6965, is
19 amended to read as follows:

20 Section 6965. A. The Insurance Commissioner shall have power
21 and authority to examine and investigate the affairs of every
22 pharmacy benefits manager (PBM) engaged in pharmacy benefits
23 management in this state in order to determine whether such entity
24 is in compliance with the Patient's Right to Pharmacy Choice Act and

1 any other applicable provisions of the Oklahoma Insurance Code,
2 Section 357 et seq. of Title 59 of the Oklahoma Statutes, the
3 Pharmacy Audit Integrity Act pursuant to Section 356 et seq. of
4 Title 59 of the Oklahoma Statutes, the Third Party Prescription Act
5 pursuant to Section 781 et seq. of Title 15 of the Oklahoma
6 Statutes, and Section 365 of the Oklahoma Administrative Code.

7 B. All PBM files and records shall be subject to examination by
8 the Insurance Commissioner or by duly appointed designees. The
9 Insurance Commissioner, authorized employees, investigators, and
10 examiners shall have access to any of a PBM's files and records that
11 may relate to a particular complaint under investigation or to an
12 inquiry or examination by the Insurance Department.

13 C. Every officer, director, employee, or agent of the PBM or of
14 the health insurer, upon receipt of any inquiry from the
15 Commissioner shall, within twenty (20) days from the date the
16 inquiry is sent, furnish the Commissioner with an adequate response
17 to the inquiry.

18 D. ~~When making an examination under this section~~ While in the
19 course of an evaluation, examination, investigation, or review, the
20 Insurance Commissioner may retain subject matter experts, attorneys,
21 appraisers, independent actuaries, independent certified public
22 accountants or an accounting firm or individual holding a permit to
23 practice public accounting, certified financial examiners or other
24 professionals and specialists ~~as examiners, the.~~ The cost of any

1 examination ~~which~~ shall be borne by the PBM that is the subject of
2 the examination.

3 SECTION 5. AMENDATORY 36 O.S. 2021, Section 6966, is
4 amended to read as follows:

5 Section 6966. A. There is hereby created the Patient's Right
6 to Pharmacy Choice Commission.

7 B. The Insurance Commissioner shall provide for the receiving
8 and processing of individual complaints alleging violations of the
9 provisions of the Patient's Right to Pharmacy Choice Act, the
10 Pharmacy Audit Integrity Act and Sections 357 through 360 of Title
11 59 of the Oklahoma Statutes.

12 C. The Commissioner shall have the power and authority to
13 review complaints, subpoena witnesses and records, initiate
14 prosecution, reprimand, require restitution, approve and sign
15 settlement agreements, place on probation, suspend, revoke, ~~and/or~~
16 levy fines not less than One Hundred Dollars (\$100.00) and not to
17 exceed Ten Thousand Dollars (\$10,000.00), or any combination
18 thereof, for each count for which any pharmacy benefits manager
19 (PBM) has violated a provision of the Patient's Right to Pharmacy
20 Choice Act, the Pharmacy ~~Integrity~~ Audit Integrity Act pursuant to
21 Section 356 et seq. of Title 59 of the Oklahoma Statutes, and
22 Sections 357 through 360 of Title 59 of the Oklahoma Statutes, the
23 Third Party Prescription Act pursuant to Section 781 et seq. of
24 Title 15 of the Oklahoma Statutes, and Section 365 of the Oklahoma

1 Administrative Code. Any allegation of violation that cannot be
2 settled shall go to a hearing before the Pharmacy Choice Commission.

3 The Pharmacy Choice Commission shall hold hearings and may
4 reprimand, require restitution, ~~place on probation, suspend, revoke~~
5 or levy fines not less than One Hundred Dollars (\$100.00) and not to
6 exceed Ten Thousand Dollars (\$10,000.00) for each count that a PBM
7 has violated a provision of the Patient's Right to Pharmacy Choice
8 Act, the Pharmacy ~~Integrity~~ Audit Integrity Act, ~~or~~ Sections 357
9 through 360 of Title 59 of the Oklahoma Statutes, the Third Party
10 Prescription Act, or Section 365 of the Oklahoma Administrative
11 Code. The Insurance Commissioner or the Pharmacy Choice Commission
12 may impose as part of any disciplinary action restitution to the
13 provider or patient and the payment of costs expended by the
14 Pharmacy Choice Commission or Insurance Department for any legal
15 fees and costs including, but not limited to, staff time, salary and
16 travel expense, witness fees and attorney fees. The Insurance
17 Commissioner or the Pharmacy Choice Commission may review violations
18 singularly or in combination, as the nature of the violation
19 requires.

20 D. The Pharmacy Choice Commission shall consist of seven (7)
21 persons who shall serve as hearing examiners and shall be appointed
22 as follows:

23 1. Two persons who are members in good standing of the Oklahoma
24 Pharmacists Association, who shall be appointed by the ~~Oklahoma~~

1 State Board of Pharmacy; a list of eligible appointees shall be sent
2 annually to the ~~Oklahoma~~ State Board of Pharmacy by the Oklahoma
3 Pharmacists Association;

4 2. Two consumer members not employed by or professionally
5 related to the insurance, pharmacy or PBM industry appointed by the
6 Office of the Governor;

7 3. Two persons representing the PBM or insurance industry
8 appointed by the Insurance Commissioner; and

9 4. One person representing the Office of the Attorney General
10 appointed by the Attorney General.

11 E. Pharmacy Choice Commission members first appointed shall
12 serve the initial term staggered as follows: the two members
13 appointed by the Office of the Governor shall serve for one (1)
14 year, the two members appointed by the Insurance Commissioner shall
15 serve for two (2) years, the two members appointed by the Oklahoma
16 Pharmacists Association shall serve for two (2) years and the one
17 member appointed by the Attorney General shall serve for three (3)
18 years. Subsequent terms shall be for five (5) years. The terms of
19 the members shall expire on the thirtieth day of June of the year
20 designated for the expiration of the term for which appointed, but
21 the member shall serve until a qualified successor has been duly
22 appointed. Except for the initial term to establish the Pharmacy
23 Choice Commission, no person shall be appointed to serve more than
24 two consecutive terms. The Commission shall annually elect a chair

1 and ~~vice chair~~ vice chair from among its members. There shall be no
2 limit on the number of times a member may serve as chair or ~~vice-~~
3 ~~chair~~ vice chair. A quorum shall consist of no less than five
4 members and shall be required for the Commission to hold a hearing.

5 F. Hearings shall be held in the Insurance Commissioner's
6 offices or at such other place as the Insurance Commissioner may
7 deem convenient.

8 G. The Insurance Commissioner shall issue and serve upon the
9 PBM a statement of the charges and a notice of hearing in accordance
10 with the Administrative Procedures Act, Sections 250 through 323 of
11 Title 75 of the Oklahoma Statutes. A hearing shall be set within
12 thirty (30) days and notice of that hearing date shall be provided
13 to the complainant within a reasonable time period.

14 H. At the time and place fixed for a hearing, the PBM shall
15 have an opportunity to be heard and to show cause why ~~the Pharmacy~~
16 ~~Choice Commission~~ his, her, or the entity's license should not
17 ~~revoke or suspend the PBM's license and levy~~ be revoked, put on
18 probation, or suspended or why a reprimand or an administrative
19 fine fine should not be issued against him, her, or it for each
20 violation. Upon good cause shown, ~~the Commission shall permit~~ any
21 complainant or a duly authorized representative of the complainant
22 shall be permitted to intervene, appear and be heard at the hearing
23 on the merits by counsel or in person.

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1 I. All hearings will be public and held in accordance with, and
2 governed by, Sections 250 through 323 of Title 75 of the Oklahoma
3 Statutes.

4 J. The Insurance Commissioner, upon written request reasonably
5 made by the complainant or the licensed PBM affected by the hearing
6 and at such expense of the requesting party, shall cause a full
7 stenographic record of the proceedings to be made by a competent
8 court reporter.

9 K. If the Insurance Commissioner or Pharmacy Choice Commission
10 determines that a PBM has engaged in violations of the Patient's
11 Right to Pharmacy Choice Act, the Pharmacy Audit Integrity Act, the
12 Third Party Prescription Act, or Sections 357 through 360 of Title
13 59 of the Oklahoma Statutes, or Section 365 of the Oklahoma
14 Administrative Code, with such frequency as to indicate a general
15 business practice and that such PBM should be subjected to closer
16 supervision with respect to such practices, the Insurance
17 Commissioner or the Pharmacy Choice Commission may require the PBM
18 to file a report at such periodic intervals as the Insurance
19 Commissioner or the Pharmacy Choice Commission deems necessary.

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

22 Section 6967. A. Documents, evidence, materials, records,
23 reports, complaints or other information in the possession or
24 control of the Insurance Department or the Patient's Right to

1 Pharmacy Choice Commission that are obtained by, created by or
2 disclosed to the Insurance Commissioner, Pharmacy Choice Commission
3 or any other person in the course of an evaluation, examination,
4 investigation or review made pursuant to the provisions of the
5 Patient's Right to Pharmacy Choice Act, the Pharmacy ~~Integrity~~ Audit
6 Integrity Act or Sections 357 through 360 of Title 59 of the
7 Oklahoma Statutes shall be confidential by law and privileged, shall
8 not be subject to open records request, shall not be subject to
9 subpoena and shall not be subject to discovery or admissible in
10 evidence in any private civil action if obtained from the Insurance
11 Commissioner, the Pharmacy Choice Commission or any employees or
12 representatives of the Insurance Commissioner.

13 B. Nothing in this section shall prevent the disclosure of a
14 final order issued against a pharmacy benefits manager by the
15 Insurance Commissioner or Pharmacy Choice Commission. Such orders
16 shall be open records.

17 C. In the course of any hearing made pursuant to the provisions
18 of the Patient's Right to Pharmacy Choice Act, the Pharmacy
19 ~~Integrity~~ Audit Integrity Act, the Third Party Prescription Act,
20 Section 365 of the Oklahoma Administrative Code, or Sections 357
21 through 360 of Title 59 of the Oklahoma Statutes, nothing in this
22 section shall be construed to prevent the Insurance Commissioner or
23 any employees or representatives of the Insurance Commissioner from
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1 presenting admissible documents, evidence, materials, records,
2 reports or complaints to the adjudicating authority.

3 SECTION 7. AMENDATORY 59 O.S. 2021, Section 356.1, is
4 amended to read as follows:

5 Section 356.1. A. For purposes of the Pharmacy Audit Integrity
6 Act, "pharmacy benefits manager" or "PBM" means a person, business,
7 or other entity that performs pharmacy benefits management. The
8 term includes a person or entity acting for a PBM in a contractual
9 or employment relationship in the performance of pharmacy benefits
10 management for a covered entity as defined pursuant to Section 357
11 of this title, managed care company, nonprofit hospital, medical
12 service organization, insurance company, third-party payor, or a
13 health program administered by a department of this state.

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

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

23 SECTION 8. AMENDATORY 59 O.S. 2021, Section 357, is
24 amended to read as follows:

1 Section 357. As used in ~~this act~~ Sections 357 through 360 of
2 this title:

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

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

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

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

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

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

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

20 7. "Pharmacy benefits manager" or "PBM" means a person,
21 business or other entity that performs pharmacy benefits management.
22 ~~The term includes a person or entity acting for a PBM in~~ and any
23 other person, business, or other entity acting for the PBM under a
24 contractual or employment relationship in the performance of

1 pharmacy benefits management for a ~~managed care company, nonprofit~~
2 ~~hospital, medical service organization, insurance company, third-~~
3 ~~party payor, or a health program administered by an agency of this~~
4 state provider or covered entity;

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

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

13 SECTION 9. AMENDATORY 59 O.S. 2021, Section 360, is
14 amended to read as follows:

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

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

23 2. In order to place a drug on the MAC list, ensure that the
24 drug is listed as "A" or "B" rated in the most recent version of the

1 ~~FDA's~~ United States Food and Drug Administration Approved Drug
2 Products with Therapeutic Equivalence Evaluations, also known as the
3 Orange Book, and the drug is generally available for purchase by
4 pharmacies in the state from national or regional wholesalers and is
5 not obsolete;

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

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

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

4 5. If a below-cost reimbursement appeal is denied⁷:

5 a. the PBM shall provide the reason for the denial,
6 including the National Drug Code number from and the
7 name of the specific national or regional wholesalers
8 doing business in this state where the drug is
9 currently in stock and available for purchase by the
10 dispensing pharmacy at a price below the PBM's
11 reimbursement price. ~~If the pharmacy benefits manager~~
12 ~~cannot provide a specific national or regional~~
13 ~~wholesaler where the drug can be purchased by the~~
14 ~~dispensing pharmacy at a price below the pharmacy~~
15 ~~benefits manager's reimbursement price, the pharmacy~~
16 ~~benefits manager shall immediately adjust the~~
17 ~~reimbursement amount, permit the dispensing pharmacy~~
18 ~~to reverse and rebill the claim in question, and make~~
19 ~~the reimbursement amount adjustment retroactive and~~
20 ~~effective for all contracted providers, or~~

21 b. if the National Drug Code number provided by the PBM
22 is not available below the provider's acquisition cost
23 from the pharmaceutical wholesaler from whom the
24 provider purchases the majority of prescription drugs

1 for resale, then the PBM shall adjust the maximum
2 allowable cost list above the challenging provider's
3 acquisition cost and permit the provider to reverse
4 and rebill each claim affected by the inability to
5 procure the drug at a cost that is equal to or less
6 than the previously challenged maximum allowable cost.

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

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

16 D. A pharmacy or pharmacist may decline to provide the
17 pharmacist clinical or dispensing services to a patient or pharmacy
18 benefits manager if the pharmacy or pharmacist is to be paid less
19 than the pharmacy's cost for providing the pharmacist clinical or
20 dispensing services. A PBM shall not cancel or threaten to cancel
21 its contract with a provider in response to a provider's declination
22 to provide such service if the provider was to be paid less than the
23 cost to the pharmacy for providing such service.

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

4 SECTION 10. This act shall become effective November 1, 2023.

5 COMMITTEE REPORT BY: COMMITTEE ON RETIREMENT AND INSURANCE
6 February 21, 2023 - DO PASS AS AMENDED BY CS
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