

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 57th Legislature (2019)

4 ENGROSSED SENATE
5 BILL NO. 841

 By: McCortney of the Senate

 and

 McEntire of the House

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9 An Act relating to health insurance; creating the
10 Prescription Access and Affordability Act; defining
11 terms; requiring retail pharmacy networks to comply
12 with certain access standards; requiring the
13 Insurance Department to review standards; prohibiting
14 certain acts by pharmacy benefits managers;
15 establishing prohibitions for certain contracts
16 between pharmacy benefit managers and pharmacies;
17 requiring certain remittance to health or pharmacy
18 benefit plans for certain purpose; establishing
19 purposes for certain remittances; requiring health
20 insurers to file annual compensation reports;
21 establishing start date for required filing;
22 requiring health insurer's Pharmacy and
23 Therapeutics committee to establish a formulary;
24 requiring health insurer to prohibit certain
 conflicts of interest; specifying certain conflicts
 of interest; requiring health insurer to display
 formulary on website; establishing information
 required to be posted online; requiring insurer to
 update information in certain timeframe; requiring
 Insurance Commissioner to establish procedure for
 complaints alleging violation of act; requiring
 Commissioner to establish Prescription Access and
 Affordability Advisory Committee for certain
 purposes; authorizing committee to impose certain
 disciplinary action and fines; establishing makeup of
 committee; establishing membership terms of committee
 members; establishing location of certain hearings;
 requiring Commissioner to provide statement of
 charges and certain notice to pharmacy benefits

1 managers; establishing procedure for hearings;
2 applying Administrative Procedures Act to hearings;
3 requiring Commissioner to keep certain record of
4 proceedings; authorizing Commissioner to require
5 certain reports from pharmacy benefits managers;
6 classifying certain documents and information as
7 confidential; authorizing disclosure of certain
8 information; and providing an effective date.

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

10 SECTION 1. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 6170 of Title 36, unless there
12 is created a duplication in numbering, reads as follows:

13 A. This act shall be known and may be cited as the
14 "Prescription Access and Affordability Act".

15 B. The purpose of the Prescription Access and Affordability Act
16 is to establish minimum and uniform access standards and
17 prohibitions on restriction of the right of a patient to choose a
18 pharmacy provider.

19 SECTION 2. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 6171 of Title 36, unless there
21 is created a duplication in numbering, reads as follows:

22 For purposes of this act:

23 1. "Benefit plan" means any health benefit plan offered by a
24 health insurance carrier, health maintenance organization, managed
care entity, or any other entity that provides prescription drug
benefits to covered individuals, including workers' compensation

1 programs, state-administered health benefit plans and self-funded
2 benefit programs;

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

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

13 4. "Retail pharmacy network" means retail pharmacy providers
14 contracted with the entity providing or administering a benefit plan
15 in which the pharmacy primarily fills and sells prescriptions via a
16 retail, storefront location.

17 SECTION 3. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 6172 of Title 36, unless there
19 is created a duplication in numbering, reads as follows:

20 A. Retail pharmacy networks shall comply with the following
21 access standards:

22 1. At least ninety percent (90%) of covered individuals in the
23 benefit plan's Suburban Service Area live within seven (7) miles of
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1 a retail pharmacy designated as preferred participating pharmacy in
2 the benefit plan's retail pharmacy network;

3 2. At least seventy percent (70%) of covered individuals in the
4 benefit plan's Rural Service Area live within fifteen (15) miles of
5 a retail pharmacy participating in the benefit plan's retail
6 pharmacy network;

7 3. At least seventy percent (70%) of covered individuals in the
8 benefit plan's Rural Service Area live within eighteen (18) miles of
9 a retail pharmacy designated as a preferred participating pharmacy
10 in the benefit plan's retail pharmacy network; and

11 4. Mail-order pharmacies shall not be used to meet access
12 standards for retail pharmacy networks.

13 B. The Oklahoma Insurance Department shall promulgate any
14 rules necessary to administer and enforce the provisions of this
15 section.

16 SECTION 4. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 6173 of Title 36, unless there
18 is created a duplication in numbering, reads as follows:

19 A. The Oklahoma Insurance Department shall review and approve
20 retail pharmacy network access for all benefit plans to ensure
21 compliance with Section 3 of this act.

22 B. A pharmacy benefits manager or representative of a pharmacy
23 benefits manager shall not:

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1 1. Cause or knowingly permit the use of any advertisement,
2 promotion, solicitation, representation, proposal or offer that is
3 untrue, deceptive or misleading;

4 2. Charge a pharmacist or pharmacy a fee related to the
5 resolution of a claim, including but not limited to a fee for:

- 6 a. the submission of a claim,
7 b. enrollment or participation in a retail pharmacy
8 network,
9 c. the development or management of claims processing
10 services, or
11 d. services or claims payment services related to
12 participation in a retail pharmacy network;

13 3. Reimburse a pharmacy or pharmacist in the state an amount
14 less than the amount that the pharmacy benefits manager reimburses a
15 pharmacy owned by or under common ownership with a pharmacy benefits
16 manager for providing the same covered services. The reimbursement
17 amount shall be calculated on a per-unit basis using the same
18 generic product identifier or generic code number submitted by the
19 pharmacy benefits manager owned or affiliated pharmacy;

20 4. Deny a pharmacy the opportunity to participate in any
21 pharmacy network at standard or preferred participation status if
22 the pharmacy is willing to accept the terms and conditions that the
23 pharmacy benefits manager has established for other pharmacies as a
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1 condition of standard network participation or preferred network
2 participation status;

3 5. Impose on a covered individual a monetary advantage or
4 penalty, including a higher cost-sharing or additional fee which
5 would affect choices of network pharmacy by a covered person;

6 6. Retroactively deny or reduce reimbursement for a covered
7 service claim after returning a paid claim response as part of the
8 resolution of the claim, unless:

- 9 a. the original claim was submitted fraudulently, or
- 10 b. the pharmacy service provided related to the subject
11 claim violated the Oklahoma Pharmacy Act; or

12 7. Fail to make any payment due to a pharmacy or pharmacist for
13 covered services properly rendered in the event a pharmacy benefits
14 manager terminates a pharmacy or pharmacist from a pharmacy benefits
15 manager network.

16 SECTION 5. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 6174 of Title 36, unless there
18 is created a duplication in numbering, reads as follows:

19 The prohibitions under this section apply to contracts between
20 pharmacy benefit managers and pharmacists or pharmacies for
21 participation in retail pharmacy networks.

22 1. A pharmacy benefits manager contract with a pharmacist or
23 pharmacy shall not contain a provision prohibiting disclosure to
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1 patients of billed or allowed amounts, reimbursement rates or out-
2 of-pocket costs.

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

10 SECTION 6. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 6175 of Title 36, unless there
12 is created a duplication in numbering, reads as follows:

13 A. All compensation remitted by a pharmaceutical manufacturer,
14 developer or labeler, directly or indirectly related to a health
15 benefit plan or pharmacy benefit plan shall be remitted to, and
16 retained by, that health benefit plan or pharmacy benefit plan for
17 the purposes described in subsection B of this section.

18 B. All compensation received by or on behalf of a health
19 insurer from a pharmaceutical manufacturer, developer or labeler
20 shall be used by the health insurer to:

21 1. Lower health benefits plan or pharmacy benefit plan premiums
22 for covered persons;

23 2. Lower copayment and coinsurance amounts for covered persons;

24 or

1 3. Expand pharmacy benefit plan coverage.

2 C. A health insurer shall file with the commissioner, on or
3 before March 1 each year, an annual report, in a manner and form
4 established by the Insurance Department, demonstrating the amount
5 and nature of how compensation received from pharmaceutical
6 manufacturers, developers or labelers has:

7 1. Lowered health benefit plan or pharmacy benefit plan
8 premiums for covered persons;

9 2. Lowered copayment and coinsurance amounts for covered
10 persons; or

11 3. Expanded pharmacy benefit plan coverage.

12 D. The annual report filing requirement in subsection C of this
13 section shall not begin until March 1, 2021.

14 SECTION 7. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 6176 of Title 36, unless there
16 is created a duplication in numbering, reads as follows:

17 A. A health insurer's Pharmacy and Therapeutics committee shall
18 establish a formulary.

19 B. A health insurer shall prohibit conflicts of interest for
20 members of the Pharmacy and Therapeutics committee.

21 1. A person may not serve on a Pharmacy and Therapeutics
22 committee if the person is:

- 1 a. currently employed or was employed within the
2 preceding year, by a pharmaceutical manufacturer,
3 developer, labeler, wholesaler, or distributor, or
4 b. currently receives compensation, or received
5 compensation within the preceding year, from a
6 pharmaceutical manufacturer, developer, labeler,
7 wholesaler, or distributor.

8 2. A health insurer shall prohibit the Pharmacy and
9 Therapeutics committee, and any member of the Pharmacy and
10 Therapeutics committee, from receiving any compensation or funding
11 from a pharmaceutical manufacturer, developer, labeler, wholesaler,
12 or distributor.

13 C. A health insurer shall display its formulary on its website
14 to be publicly accessible.

15 1. The formulary shall be electronically searchable by drug
16 name and any other means required by the commissioner, as
17 established by rule.

18 2. The formulary shall include, at a minimum, the following:

- 19 a. an indication of whether each drug on the formulary is
20 preferred under the plan,
21 b. an indication of whether each drug on the formulary
22 requires prior authorization or has step therapy or
23 quantity limit restrictions,
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- 1 c. the specific tier the drug falls under, if the health
2 insurer's plan uses a tiered formulary,
3 d. the amount of the drug copayment, if applicable,
4 e. the amount of the drug coinsurance, if applicable,
5 f. whether the drug is subject to a deductible, and if
6 so, the amount of the deductible,
7 g. whether the drug is included on the maximum allowable
8 cost list of the health insurer, and if so, the price
9 of the drug as established by the maximum allowable
10 cost list, and
11 h. for drugs not included on the maximum allowable cost
12 list of the health insurer, the average wholesale
13 price as established by the national pricing source.

14 D. The health insurer shall update the information required in
15 subparagraph g of paragraph 2 of subsection C of this section no
16 less than every seven (7) days.

17 SECTION 8. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 6177 of Title 36, unless there
19 is created a duplication in numbering, reads as follows:

20 A. The Commissioner shall provide for the receiving and
21 processing of individual complaints alleging violations of the
22 provisions of this act or with provisions of Sections 357 through
23 360 of Title 59 of the Oklahoma Statutes.

1 B. The Commissioner shall establish a Prescription Access and
2 Affordability Advisory Committee to review complaints, hold hearings
3 and subpoena witnesses and records, initiate prosecution, reprimand,
4 place on probation, suspend, revoke and levy fines not to exceed Ten
5 Thousand Dollars (\$10,000.00) for each count for which any pharmacy
6 benefits manager has been convicted in hearings by the committee.
7 The committee may impose as part of any disciplinary action the
8 payment of costs expended by the Department of Insurance for any
9 legal fees and costs, including but not limited to staff time,
10 salary and travel expense, witness fees and attorney fees. The
11 committee may take such actions singly or in combination, as the
12 nature of the violation requires.

13 C. The Committee shall consist of seven (7) persons appointed
14 as follows:

15 1. Two persons who shall be nominated by the Oklahoma
16 Pharmacists Association;

17 2. Two consumer members not employed or related to insurance,
18 pharmacy or pharmacy benefit management nominated by the Governor's
19 office;

20 3. Two persons representing the pharmacy benefits manager or
21 Insurance Industry nominated by the Insurance Commissioner; and

22 4. One person representing the Attorney General's Office
23 nominated by the Attorney General.

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1 D. Committee members shall be appointed for a term of five (5)
2 years. The terms of the members of the Committee shall expire on
3 June 30 of the year designated for the expiration of the term for
4 which appointed but the member shall serve until a qualified
5 successor has been duly appointed. No person shall be appointed to
6 serve more than two consecutive terms.

7 E. Hearings shall be held in the Insurance Commissioner's
8 offices or at such other place as the Commissioner may deem
9 convenient.

10 F. The Commissioner shall issue and serve upon the pharmacy
11 benefits manager a statement of the charges and a notice of hearing
12 in accordance with the Administrative Procedures Act.

13 G. At the time and place fixed for a hearing, the pharmacy
14 benefits manager shall have an opportunity to be heard and to show
15 cause why the Commissioner or his or her duly appointed hearing
16 examiner should not revoke or suspend the license of the pharmacy
17 benefits manager and levy administrative fines for each count, or
18 both. Upon good cause shown, the Commissioner shall permit any
19 person to intervene, appear and be heard at the hearing by counsel
20 or in person.

21 H. All hearings will be public and held in accordance with, and
22 governed by, Article II of the Administrative Procedures Act,
23 Section 308A et seq. of Title 75 of the Oklahoma Statutes.

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1 I. The Commissioner, upon written request reasonably made by
2 the licensed pharmacy benefits manager affected by the hearing, and
3 at such expense of the pharmacy benefits manager, shall cause a full
4 stenographic record of the proceedings to be made by a competent
5 court reporter.

6 J. If the Insurance Commissioner determines, based on an
7 investigation of complaints, that a pharmacy benefits manager has
8 engaged in violations of this act with such frequency as to indicate
9 a general business practice and that the pharmacy benefits manager
10 should be subjected to closer supervision with respect to such
11 practices, the Commissioner may require the pharmacy benefits
12 manager to file a report at such periodic intervals as the
13 Commissioner deems necessary.

14 SECTION 9. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 6178 of Title 36, unless there
16 is created a duplication in numbering, reads as follows:

17 A. Documents, materials, reports, complaints or other
18 information in the possession or control of the Insurance Department
19 that are obtained by or disclosed to the Commissioner or any other
20 person in the course of an evaluation, examination, investigation or
21 review made pursuant to the provisions of this act shall be
22 confidential by law and privileged, shall not be subject to open
23 records request, shall not be subject to subpoena and shall not be
24 subject to discovery or admissible in evidence in any private civil

1 action if obtained from the Commissioner or any employees or
2 representatives of the Commissioner.

3 B. Nothing in this section shall prevent the disclosure of a
4 final order issued against a pharmacy benefits manager by the
5 Commissioner or his or her duly appointed hearing examiner. Such
6 orders shall be open records.

7 SECTION 10. This act shall become effective November 1, 2019.

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9 DIRECT TO CALENDAR.

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