

1 ENGROSSED SENATE
2 BILL NO. 841

By: McCortney of the Senate

and

McEntire of the House

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6 An Act relating to health insurance; creating the
7 Prescription Access and Affordability Act; defining
8 terms; requiring retail pharmacy networks to comply
9 with certain access standards; requiring the
10 Insurance Department to review standards; prohibiting
11 certain acts by pharmacy benefits managers;
12 establishing prohibitions for certain contracts
13 between pharmacy benefit managers and pharmacies;
14 requiring certain remittance to health or pharmacy
15 benefit plans for certain purpose; establishing
16 purposes for certain remittances; requiring health
17 insurers to file annual compensation reports;
18 establishing start date for required filing;
19 requiring health insurer's Pharmacy and
20 Therapeutics committee to establish a formulary;
21 requiring health insurer to prohibit certain
22 conflicts of interest; specifying certain conflicts
23 of interest; requiring health insurer to display
24 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
managers; establishing procedure for hearings;
applying Administrative Procedures Act to hearings;
requiring Commissioner to keep certain record of
proceedings; authorizing Commissioner to require
certain reports from pharmacy benefits managers;
classifying certain documents and information as

1 confidential; authorizing disclosure of certain
2 information; and providing an effective date.

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

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

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

10 B. The purpose of the Prescription Access and Affordability Act
11 is to establish minimum and uniform access standards and
12 prohibitions on restriction of the right of a patient to choose a
13 pharmacy provider.

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

17 For purposes of this act:

18 1. "Benefit plan" means any health benefit plan offered by a
19 health insurance carrier, health maintenance organization, managed
20 care entity, or any other entity that provides prescription drug
21 benefits to covered individuals, including workers' compensation
22 programs, state-administered health benefit plans and self-funded
23 benefit programs;

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

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

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

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

18 A. Retail pharmacy networks shall comply with the following
19 access standards:

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

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

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

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

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

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

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

20 B. A pharmacy benefits manager or representative of a pharmacy
21 benefits manager shall not:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 1. Lower health benefits plan or pharmacy benefit plan premiums
20 for covered persons;

21 2. Lower copayment and coinsurance amounts for covered persons;
22 or

23 3. Expand pharmacy benefit plan coverage.
24

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

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

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

10 3. Expanded pharmacy benefit plan coverage.

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

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

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

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

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

22 a. currently employed or was employed within the
23 preceding year, by a pharmaceutical manufacturer,
24 developer, labeler, wholesaler, or distributor, or

1 b. currently receives compensation, or received
2 compensation within the preceding year, from a
3 pharmaceutical manufacturer, developer, labeler,
4 wholesaler, or distributor.

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

10 C. A health insurer shall display its formulary on its website
11 to be publicly accessible.

12 1. The formulary shall be electronically searchable by drug
13 name and any other means required by the commissioner, as
14 established by rule.

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

16 a. an indication of whether each drug on the formulary is
17 preferred under the plan,

18 b. an indication of whether each drug on the formulary
19 requires prior authorization or has step therapy or
20 quantity limit restrictions,

21 c. the specific tier the drug falls under, if the health
22 insurer's plan uses a tiered formulary,

23 d. the amount of the drug copayment, if applicable,

24 e. the amount of the drug coinsurance, if applicable,

1 f. whether the drug is subject to a deductible, and if
2 so, the amount of the deductible,

3 g. whether the drug is included on the maximum allowable
4 cost list of the health insurer, and if so, the price
5 of the drug as established by the maximum allowable
6 cost list, and

7 h. for drugs not included on the maximum allowable cost
8 list of the health insurer, the average wholesale
9 price as established by the national pricing source.

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

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

16 A. The Commissioner shall provide for the receiving and
17 processing of individual complaints alleging violations of the
18 provisions of this act or with provisions of Sections 357 through
19 360 of Title 59 of the Oklahoma Statutes.

20 B. The Commissioner shall establish a Prescription Access and
21 Affordability Advisory Committee to review complaints, hold hearings
22 and subpoena witnesses and records, initiate prosecution, reprimand,
23 place on probation, suspend, revoke and levy fines not to exceed Ten
24 Thousand Dollars (\$10,000.00) for each count for which any pharmacy

1 benefits manager has been convicted in hearings by the committee.
2 The committee may impose as part of any disciplinary action the
3 payment of costs expended by the Department of Insurance for any
4 legal fees and costs, including but not limited to staff time,
5 salary and travel expense, witness fees and attorney fees. The
6 committee may take such actions singly or in combination, as the
7 nature of the violation requires.

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

10 1. Two persons who shall be nominated by the Oklahoma
11 Pharmacists Association;

12 2. Two consumer members not employed or related to insurance,
13 pharmacy or pharmacy benefit management nominated by the Governor's
14 office;

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

17 4. One person representing the Attorney General's Office
18 nominated by the Attorney General.

19 D. Committee members shall be appointed for a term of five (5)
20 years. The terms of the members of the Committee shall expire on
21 June 30 of the year designated for the expiration of the term for
22 which appointed but the member shall serve until a qualified
23 successor has been duly appointed. No person shall be appointed to
24 serve more than two consecutive terms.

1 E. Hearings shall be held in the Insurance Commissioner's
2 offices or at such other place as the Commissioner may deem
3 convenient.

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

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

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

18 I. The Commissioner, upon written request reasonably made by
19 the licensed pharmacy benefits manager affected by the hearing, and
20 at such expense of the pharmacy benefits manager, shall cause a full
21 stenographic record of the proceedings to be made by a competent
22 court reporter.

23 J. If the Insurance Commissioner determines, based on an
24 investigation of complaints, that a pharmacy benefits manager has

1 engaged in violations of this act with such frequency as to indicate
2 a general business practice and that the pharmacy benefits manager
3 should be subjected to closer supervision with respect to such
4 practices, the Commissioner may require the pharmacy benefits
5 manager to file a report at such periodic intervals as the
6 Commissioner deems necessary.

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

10 A. Documents, materials, reports, complaints or other
11 information in the possession or control of the Insurance Department
12 that are obtained by or disclosed to the Commissioner or any other
13 person in the course of an evaluation, examination, investigation or
14 review made pursuant to the provisions of this act shall be
15 confidential by law and privileged, shall not be subject to open
16 records request, shall not be subject to subpoena and shall not be
17 subject to discovery or admissible in evidence in any private civil
18 action if obtained from the Commissioner or any employees or
19 representatives of the Commissioner.

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

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

1 Passed the Senate the 5th day of March, 2019.

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3 _____
4 Presiding Officer of the Senate

5 Passed the House of Representatives the ____ day of _____,
6 2019.

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8 _____
9 Presiding Officer of the House
10 of Representatives