# An Act

ENROLLED SENATE
BILL NO. 841

By: McCortney of the Senate

and

McEntire, Phillips, Roe, West (Tammy), McBride, West (Kevin), Townley, Dills, McDugle, Bell, Burns, Fugate, Caldwell (Trey), Ranson and Munson of the House

An Act relating to health insurance; creating the Prescription Access and Affordability Act; defining terms; requiring retail pharmacy networks to comply with certain access standards; requiring the Insurance Department to review standards; prohibiting certain acts by pharmacy benefits managers; establishing prohibitions for certain contracts between pharmacy benefit managers and pharmacies; requiring certain remittance to health or pharmacy benefit plans for certain purpose; establishing purposes for certain remittances; requiring health insurers to file annual compensation reports; establishing start date for required filing; requiring health insurer's Pharmacy and Therapeutics committee to establish a formulary; 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 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 confidential; authorizing disclosure of certain information; and providing an effective date.

SUBJECT: Prescription accessibility

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

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

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

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

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

For purposes of this act:

1. "Benefit plan" means any health benefit plan offered by a health insurance carrier, health maintenance organization, managed care entity, or any other entity that provides prescription drug

benefits to covered individuals, including workers' compensation programs, state-administered health benefit plans and self-funded benefit programs;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. the submission of a claim,

b. enrollment or participation in a retail pharmacy network,

c. the development or management of claims processing services, or

d. services or claims payment services related to participation in a retail pharmacy network;

3. Reimburse a pharmacy or pharmacist in the state an amount less than the amount that the pharmacy benefits manager reimburses a pharmacy owned by or under common ownership with a pharmacy benefits manager for providing the same covered services. The reimbursement amount shall be calculated on a per-unit basis using the same

generic product identifier or generic code number submitted by the pharmacy benefits manager owned or affiliated pharmacy;

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

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

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

a. the original claim was submitted fraudulently, or

b. the pharmacy service provided related to the subject claim violated the Oklahoma Pharmacy Act; or

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

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

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

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

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

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

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

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

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

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

3. Expand pharmacy benefit plan coverage.

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

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

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

3. Expanded pharmacy benefit plan coverage.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. The Commissioner shall establish a Prescription Access and Affordability Advisory Committee to review complaints, hold hearings and subpoena witnesses and records, initiate prosecution, reprimand,

place on probation, suspend, revoke and levy fines not to exceed Ten Thousand Dollars ($10,000.00) for each count for which any pharmacy benefits manager has been convicted in hearings by the committee. The committee may impose as part of any disciplinary action the payment of costs expended by the Department of Insurance for any legal fees and costs, including but not limited to staff time, salary and travel expense, witness fees and attorney fees. The committee may take such actions singly or in combination, as the nature of the violation requires.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Presiding Officer of the Senate

Passed the House of Representatives the 24th day of April, 2019.

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Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

_____
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20 _____, at _____ o'clock _____ M.

By: _____