

1 **SENATE FLOOR VERSION**

2 February 27, 2024

3 COMMITTEE SUBSTITUTE
4 FOR
5 SENATE BILL NO. 1670

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

6 and

7 McEntire of the House

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10 An Act relating to pharmacy benefits management;
11 amending 59 O.S. 2021, Sections 356.1, 356.2, 356.3,
12 357, 358, and 360, which relate to the Pharmacy Audit
13 Integrity Act and pharmacy reimbursement; providing
14 for rule promulgation; modifying audit notice
15 requirements; requiring notice and reporting to the
16 Office of the Attorney General; providing for fines
17 and fees; modifying definitions; requiring certain
18 recouped funds from audit to be paid to patients
19 first; making certain audits null and void; requiring
20 certain notice to include certain declaration;
21 modifying definition; modifying reimbursement appeal
22 process; requiring reimbursement at certain rate
23 under certain circumstances; updating statutory
24 references; and declaring an emergency.

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

SECTION 1. AMENDATORY 59 O.S. 2021, Section 356.1, is
amended to read as follows:

Section 356.1. A. For purposes of the Pharmacy Audit Integrity
Act, "pharmacy benefits manager" or "PBM" means a person, business,

1 or other entity that performs pharmacy benefits management. The
2 term includes a person or entity acting for a PBM in a contractual
3 or employment relationship in the performance of pharmacy benefits
4 management for a managed care company, nonprofit hospital, medical
5 service organization, insurance company, third-party payor, or a
6 health program administered by a department of this state.

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

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

16 D. The Attorney General may promulgate rules to implement the
17 provisions of the Pharmacy Audit Integrity Act.

18 SECTION 2. AMENDATORY 59 O.S. 2021, Section 356.2, is
19 amended to read as follows:

20 Section 356.2. A. The entity conducting an audit of a pharmacy
21 shall:

22 1. Identify and specifically describe the audit and appeal
23 procedures in the pharmacy contract. Prescription claim
24 documentation and record-keeping requirements shall not exceed the

1 requirements set forth by the Oklahoma Pharmacy Act or other
2 applicable state or federal laws or regulations;

3 2. Give the pharmacy written notice by certified letter to the
4 pharmacy and the pharmacy's contracting agent, including
5 identification of specific prescription numbers and fill dates to be
6 audited, at least ~~two (2) weeks~~ fourteen (14) calendar days prior to
7 conducting the audit, including, but not limited to, an on-site
8 audit, a desk audit, or a wholesale purchase audit, request for
9 documentation related to the dispensing of a prescription drug or
10 any reimbursed activity by a pharmacy provider; provided, however,
11 that wholesale purchase audits shall require a minimum of thirty
12 (30) calendar days' written notice. For an on-site audit, the audit
13 date shall be the date the on-site audit occurs. For all other
14 audit types, the audit date shall be the date the pharmacy provides
15 the documentation requested in the audit notice. The pharmacy shall
16 have the opportunity to reschedule the audit no more than seven (7)
17 calendar days from the date designated on the original audit
18 notification;

19 3. Not interfere with the delivery of pharmacist services to a
20 patient and shall utilize every reasonable effort to minimize
21 inconvenience and disruption to pharmacy operations during the audit
22 process;

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

1 5. Not consider as fraud any clerical or record-keeping error,
2 such as a typographical error, scrivener's error or computer error,
3 including, but not limited to, a miscalculated day supply,
4 incorrectly billed prescription written date or prescription origin
5 code, and such errors shall not be subject to recoupment. The
6 pharmacy shall have the right to submit amended claims
7 electronically to correct clerical or record-keeping errors in lieu
8 of recoupment. To the extent that an audit results in the
9 identification of any clerical or record-keeping errors such as
10 typographical errors, scrivener's errors or computer errors in a
11 required document or record, the pharmacy shall not be subject to
12 recoupment of funds by the pharmacy benefits manager unless the
13 pharmacy benefits manager can provide proof of intent to commit
14 fraud. A person shall not be subject to criminal penalties for
15 errors provided for in this paragraph without proof of intent to
16 commit fraud;

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

22 7. Not include the dispensing fee amount or the actual invoice
23 cost of the prescription dispensed in a finding of an audit
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1 recoupment unless a prescription was not actually dispensed or a
2 physician denied authorization of a dispensing order;

3 8. Audit each pharmacy under identical standards, regularity
4 and parameters as other similarly situated pharmacies and all
5 pharmacies owned or managed by the pharmacy benefits manager
6 conducting or having conducted the audit;

7 9. Not exceed one (1) year from the date the claim was
8 submitted to or adjudicated by a managed care company, nonprofit
9 hospital or medical service organization, insurance company, third-
10 party payor, pharmacy benefits manager, a health program
11 administered by a department of this state, or any entity that
12 represents the companies, groups, or departments for the period
13 covered by an audit;

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

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

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

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

4 B. 1. Any entity that conducts wholesale purchase review
5 during an audit of a pharmacist or pharmacy shall not require the
6 pharmacist or pharmacy to provide a full dispensing report.

7 Wholesaler invoice reviews shall be limited to verification of
8 purchase inventory specific to the pharmacy claims paid by the
9 health benefits plan or pharmacy benefits manager conducting the
10 audit.

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

13 a. the National Drug Code for the dispensed drug is in a
14 quantity that is a subunit or multiple of the drug
15 purchased by the pharmacist or pharmacy as supported
16 by a wholesale invoice,

17 b. the pharmacist or pharmacy dispensed the correct
18 quantity of the drug according to the prescription,
19 and

20 c. the drug dispensed by the pharmacist or pharmacy
21 shares all but the last two digits of the National
22 Drug Code of the drug reflected on the supplier
23 invoice.

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

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

10 4. An entity conducting an audit shall provide, no later than
11 five (5) business days after the date of a request by the pharmacist
12 or pharmacy, all supporting documents the pharmacist's or pharmacy's
13 purchase suppliers provided to the health benefits plan issuer or
14 pharmacy benefits manager.

15 C. A pharmacy shall be allowed to provide the pharmacy's
16 computerized patterned medical records or the records of a hospital,
17 physician, or other authorized practitioner of the healing arts for
18 drugs or medicinal supplies written or transmitted by any means of
19 communication for purposes of supporting the pharmacy record with
20 respect to orders or refills of a legend or narcotic drug.

21 D. The entity conducting the audit shall not audit more than
22 fifty prescriptions, with specific date of service, per calendar
23 year. The annual limit to the number of prescription claims audited
24 shall be inclusive of all audits, including any prescription-related

1 documentation requests from the health insurer, pharmacy benefits
2 manager or any third-party company conducting audits on behalf of
3 any health insurer or pharmacy benefits manager during a calendar
4 year.

5 E. If paper copies of records are requested by the entity
6 conducting the audit, the entity shall pay twenty-five cents (\$0.25)
7 per page to cover the costs incurred by the pharmacy. The entity
8 conducting the audit shall provide the pharmacy with accurate
9 instructions, including any required form for obtaining
10 reimbursement for the copied records.

11 F. The entity conducting the audit shall:

12 1. Deliver a preliminary audit findings report to the pharmacy
13 and the pharmacy's contracting agent within forty-five (45) calendar
14 days of conducting the audit;

15 2. Allow the pharmacy at least ninety (90) calendar days
16 following receipt of the preliminary audit findings report in which
17 to produce documentation to address any discrepancy found during the
18 audit; provided, however, a pharmacy may request an extension, not
19 to exceed an additional forty-five (45) calendar days;

20 3. Deliver a final audit findings report to the pharmacy and
21 the pharmacy's contracting agent signed by the auditor within ten
22 (10) calendar days after receipt of additional documentation
23 provided by the pharmacy, as provided for in Section 356.3 of this
24 title;

1 4. Allow the pharmacy to reverse and resubmit claims
2 electronically within thirty (30) days of receipt of the final audit
3 report in lieu of the auditing entity recouping discrepant claim
4 amounts from the pharmacy;

5 5. Not recoup any disputed funds until after final disposition
6 of the audit findings, including the appeals process as provided for
7 in Section 356.3 of this title; and

8 6. Not accrue interest during the audit and appeal period.

9 G. Each entity conducting an audit shall provide a copy of the
10 final audit results, and a final audit report upon request, after
11 completion of any review process to the plan sponsor.

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

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

20 a. the plan sponsor and the entity conducting the audit
21 have a contract that explicitly states the percentage
22 charge or assessment to the plan sponsor, and
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1 b. a commission to an agent or employee of the entity
2 conducting the audit is not based, directly or
3 indirectly, on amounts recouped.

4 I. Unless superseded by state or federal law, auditors shall
5 only have access to previous audit reports on a particular pharmacy
6 conducted by the auditing entity for the same pharmacy benefits
7 manager, health plan or insurer. An auditing vendor contracting
8 with multiple pharmacy benefits managers or health insurance plans
9 shall not use audit reports or other information gained from an
10 audit on a pharmacy to conduct another audit for a different
11 pharmacy benefits manager or health insurance plan.

12 J. An audit shall be considered null and void if the entity
13 conducting the audit fails to follow any of the requirements under
14 this section. Any violation of this section by a pharmacy benefits
15 manager or auditing entity shall be deemed a violation of the
16 Pharmacy Audit Integrity Act.

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

19 Section 356.3. A. Each entity conducting an audit shall
20 establish a written appeals process under which a pharmacy may
21 appeal an unfavorable preliminary audit report and/or final audit
22 report to the entity.

23 B. Following an appeal, if the entity finds that an unfavorable
24 audit report or any portion thereof is unsubstantiated, the entity

1 shall dismiss the audit report or the unsubstantiated portion of the
2 audit report without any further action.

3 C. Any final audit report, following the final audit appeal
4 period, with a finding of fraud or willful misrepresentation shall
5 be referred to the district attorney having proper jurisdiction or
6 the Attorney General for prosecution upon completion of the appeals
7 process.

8 D. This ~~act does~~ section and Section 356.2 of this title do not
9 apply to any audit, review or investigation that is initiated based
10 on or that involves fraud, willful misrepresentation or abuse so
11 long as the auditing entity provides in writing at the time of the
12 audit, a clear and conspicuous declaration that the audit is being
13 conducted under suspicion of fraud, willful misrepresentation, or
14 abuse and a statement of facts that supports the reasonable
15 suspicion. Any monies recouped from a null and void audit shall be
16 returned to the affected pharmacy within fourteen (14) calendar
17 days.

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

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

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

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

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

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

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

12 Section 357. As used in this act section through Section 360 of
13 this title:

14 1. "Covered entity" means a nonprofit hospital or medical
15 service organization, insurer, health ~~coverage~~ benefit plan, ~~or~~
16 health maintenance organization; ~~a~~, health program administered by
17 the state in the capacity of ~~provider of providing~~ health coverage; ~~,~~
18 or an employer, labor union, or other ~~entity organized in the state~~
19 group of persons that provides health coverage to ~~covered~~
20 ~~individuals who are employed or reside in the~~ persons in this state.
21 This term does not include a health benefit plan that provides
22 coverage only for accidental injury, specified disease, hospital
23 indemnity, disability income, or other limited benefit health

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1 insurance policies and contracts that do not include prescription
2 drug coverage;

3 2. "Covered individual" means a member, participant, enrollee,
4 contract holder or policy holder or beneficiary of a covered entity
5 who is provided health coverage by the covered entity. A covered
6 individual includes any dependent or other person provided health
7 coverage through a policy, contract or plan for a covered
8 individual;

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

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

- 14 a. average acquisition cost, including the national drug
- 15 acquisition cost,
- 16 b. average manufacturer price,
- 17 c. average wholesale price,
- 18 d. brand effective rate or generic effective rate,
- 19 e. discount indexing,
- 20 f. federal upper limits,
- 21 g. wholesale acquisition cost, and
- 22 any other term that a pharmacy benefits manager or an
- 23 insurer of a health benefit plan may use to establish

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1 reimbursement rates to a pharmacist or pharmacy for
2 pharmacist services;

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

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

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

13 a. claims processing, retail network management and
14 payment of claims to pharmacies for prescription drugs
15 dispensed to covered individuals,

16 b. administration or management of pharmacy discount
17 cards or programs,

18 c. clinical formulary development and management
19 services,

20 ~~e.~~ d. rebate contracting and administration,

21 ~~d.~~ e. certain patient compliance, therapeutic intervention
22 and generic substitution programs, ~~or~~

23 ~~e.~~ f. administration or management of mail-order pharmacy
24 programs, or

1 g. disease management programs;

2 ~~7.~~ 8. "Pharmacy benefits manager" or "PBM" means a person,
3 business, or other entity that performs pharmacy benefits
4 management. The term ~~includes~~ shall include a person or entity
5 acting ~~for~~ on behalf of a PBM in a contractual or employment
6 relationship in the performance of pharmacy benefits management for
7 a managed care company, nonprofit hospital, medical service
8 organization, insurance company, third-party payor, or a health
9 program administered by an agency or department of this state;

10 ~~8.~~ 9. "Plan sponsor" means the employers, insurance companies,
11 unions and health maintenance organizations or any other entity
12 responsible for establishing, maintaining, or administering a health
13 benefit plan on behalf of covered individuals; and

14 ~~9.~~ 10. "Provider" means a pharmacy licensed by the State Board
15 of Pharmacy, or an agent or representative of a pharmacy, including,
16 but not limited to, the pharmacy's contracting agent, which
17 dispenses prescription drugs or devices to covered individuals.

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

20 Section 358. A. In order to provide pharmacy benefits
21 management or any of the services included under the definition of
22 pharmacy benefits management in this state, a pharmacy benefits
23 manager or any entity acting as one in a contractual or employment
24 relationship for a covered entity shall first obtain a license from

1 the ~~Oklahoma~~ Insurance Department, and the Department may charge a
2 fee for such licensure.

3 B. The Department shall establish, by regulation, licensure
4 procedures, required disclosures for pharmacy benefits managers
5 (PBMs) and other rules as may be necessary for carrying out and
6 enforcing the provisions of ~~this act~~ the Oklahoma Pharmacy Act. The
7 licensure procedures shall, at a minimum, include the completion of
8 an application form that shall include the name and address of an
9 agent for service of process, the payment of a requisite fee, and
10 evidence of the procurement of a surety bond.

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

16 D. The Department may suspend, revoke or refuse to issue or
17 renew a license for noncompliance with any of the provisions hereby
18 established or with the rules promulgated by the Department; for
19 conduct likely to mislead, deceive or defraud the public or the
20 Department; for unfair or deceptive business practices or for
21 nonpayment of a renewal fee or fine. The Department may also levy
22 administrative fines for each count of which a PBM has been
23 convicted in a Department hearing.

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

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

5 Section 360. A. The pharmacy benefits manager shall, with
6 respect to contracts between a pharmacy benefits manager and a
7 provider, including a pharmacy service administrative organization:

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

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

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

21 4. Provide a reasonable administration appeals procedure to
22 allow a provider, a provider's representative and a pharmacy service
23 administrative organization to contest reimbursement amounts within
24 fourteen (14) business days of the final adjusted payment date. The

1 pharmacy benefits manager shall not prevent the pharmacy or the
2 pharmacy service administrative organization from filing
3 reimbursement appeals in an electronic batch format. The pharmacy
4 benefits manager must respond to a provider, a provider's
5 representative and a pharmacy service administrative organization
6 who have contested a reimbursement amount through this procedure
7 within ten (10) business days. The pharmacy benefits manager must
8 respond in an electronic batch format to reimbursement appeals filed
9 in an electronic batch format. The pharmacy benefits manager shall
10 not require a pharmacy or pharmacy services administrative
11 organization to log into a system to upload individual claim appeals
12 or to download individual appeal responses. If a price update is
13 warranted, the pharmacy benefits manager shall make the change in
14 the reimbursement amount, permit the dispensing pharmacy to reverse
15 and rebill the claim in question, and make the reimbursement amount
16 change retroactive and effective for all contracted providers; and

17 5. If a below-cost reimbursement appeal is denied, the PBM
18 shall provide the reason for the denial, including the National Drug
19 Code (NDC) number from and the name of the specific national or
20 regional wholesalers doing business in this state where the drug is
21 currently in stock and available for purchase by the dispensing
22 pharmacy at a price below the PBM's reimbursement price. ~~If the~~
23 ~~pharmacy benefits manager cannot provide a specific national or~~
24 ~~regional wholesaler where the drug can be purchased by the~~

1 ~~dispensing pharmacy at a price below the pharmacy benefits manager's~~
2 ~~reimbursement price~~ If the NDC number provided by the pharmacy
3 benefits manager is not available below the acquisition cost
4 obtained from the pharmaceutical wholesaler from whom the dispensing
5 pharmacy purchases the majority of the prescription drugs that are
6 dispensed, the pharmacy benefits manager shall immediately adjust
7 the reimbursement amount, permit the dispensing pharmacy to reverse
8 and rebill the claim in question, and make the reimbursement amount
9 adjustment retroactive and effective for all contracted providers.

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

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

18 D. The pharmacy benefits manager shall not require
19 accreditation or licensing of providers, or any entity licensed or
20 regulated by the State Board of Pharmacy, other than by the State
21 Board of Pharmacy or federal government entity as a condition for
22 participation as a network provider.

23 ~~D.~~ E. A pharmacy or pharmacist may decline to provide the
24 pharmacist clinical or dispensing services to a patient or pharmacy

1 benefits manager if the pharmacy or pharmacist is to be paid less
2 than the pharmacy's cost for providing the pharmacist clinical or
3 dispensing services.

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

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

11 COMMITTEE REPORT BY: COMMITTEE ON RETIREMENT AND INSURANCE
12 February 27, 2024 - DO PASS AS AMENDED BY CS
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