STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

SENATE BILL 1573
By: Standridge

AS INTRODUCED

An Act relating to pharmacy benefit plans; amending Section 4, Chapter 263, O.S.L. 2014, as amended by Section 8, Chapter 285, O.S.L. 2016 (59 O.S. Supp. 2017, Section 360), which relates to pharmacy benefits manager; prohibiting assessment of fee under certain conditions; defining terms; setting forth prohibited acts; directing Oklahoma Insurance Commissioner to promulgate certain rules; providing subpoena power; setting forth certain administrative penalties; specifying that certain persons may maintain civil action for certain purposes; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY Section 4, Chapter 263, O.S.L. 2014, as amended by Section 8, Chapter 285, O.S.L. 2016 (59 O.S. Supp. 2017, Section 360), is amended to read as follows:

Section 360. A. The pharmacy benefits manager shall, with respect to contracts between a pharmacy benefits manager and a provider:

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

2. In order to place a drug on the MAC list, ensure that the drug is listed as "A" or "B" rated in the most recent version of the FDA's Approved Drug Products with Therapeutic Equivalence Evaluations, also known as the Orange Book, or has an "NR" or "NA" rating or a similar rating by a nationally recognized reference, and the drug is generally available for purchase by pharmacies in the state from national or regional wholesalers and is not obsolete;

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

4. Provide a reasonable administration appeals procedure to allow a provider or a provider's representative to contest reimbursement amounts within ten (10) business days of the final adjusted payment date. The pharmacy benefits manager must respond to a provider or provider's representative who has contested a reimbursement amount through this procedure within ten (10) business days. If a price update is warranted, the pharmacy benefits manager shall make the change in the reimbursement amount, permit the challenging pharmacy to reverse and rebill the claim in question, and make the reimbursement amount change effective for each similarly contracted Oklahoma provider; and

5. If the reimbursement appeal is denied, the PBM shall provide the reason for the denial, including the National Drug Code number
from national or regional wholesalers where the drug is generally available for purchase by pharmacies in the state at or below the PBM's reimbursement.

B. The pharmacy benefits manager may not place a drug on a MAC list, unless there are at least two therapeutically equivalent, multiple-source drugs, or at least one generic drug available from only one manufacturer, generally available for purchase by network pharmacies from national or regional wholesalers.

C. The pharmacy benefits manager shall not require accreditation or licensing of providers other than by the State Board of Pharmacy or other state or federal government entity.

D. The pharmacy benefit manager shall not charge or hold a provider responsible for any fee that is related to a claim unless the amount of the fee can be determined and has been disclosed to the provider at the time of the claim's adjudication.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 360.1 of Title 59, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Covered entity" means a nonprofit hospital or medical service organization, insurer, health coverage plan or health maintenance organization; a health program administered by the state in the capacity of provider of health coverage; or an employer, labor union or other entity organized in the state that provides
health coverage to covered individuals who are employed or reside in the state;

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

3. "Department" means the Oklahoma Insurance Department;

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

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

   b. clinical formulary development and management services,

   c. rebate contracting and administration,

   d. certain patient compliance, therapeutic intervention and generic substitution programs, or

   e. disease management programs;
5. "Pharmacy benefits manager" or "PBM" means a person, business or other entity, other than a covered 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 an agency of this state;

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

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 360.2 of Title 59, unless there is created a duplication in numbering, reads as follows:

A pharmacy benefits manager shall not do either of the following:

1. Require a covered individual to obtain prescription drugs from a mail order pharmacy or through the mail or other common carrier; or

2. Impose an additional cost sharing, fee, limitation on benefits or other condition or requirement on a covered individual who obtains a prescription from a retail network pharmacy instead of through a mail order pharmacy.
SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 360.3 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. A pharmacy benefits manager shall not do any of the following:

1. Deny a pharmacy the opportunity to participate in the PBM's network if the pharmacy is willing to accept the terms and conditions that the PBM has established for other pharmacies as a condition of network participation;

2. Prohibit a covered individual from utilizing the pharmacy of their choice, provided the pharmacy participates in the PBM's network; or

3. Impose on a covered individual a monetary advantage or penalty, including a higher cost sharing or additional fee, which would affect a covered individual's choice of network pharmacy.

B. This section shall not apply to a policy or contract providing any prescription drug benefits pursuant to Part D of Subchapter XVIII, Chapter 7 of Title 42 of the United States Code, commonly known as Medicare Part D, or any regulations issued pursuant thereto.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 360.4 of Title 59, unless there is created a duplication in numbering, reads as follows:
A. The Insurance Commissioner shall establish rules as may be necessary for carrying out and enforcing the provisions of this act.

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

C. The Commissioner may suspend, revoke or refuse to issue or renew a license for noncompliance with any of the provisions hereby established or with the rules promulgated by the Department or for nonpayment of a fine. The Commissioner may also levy administrative fines for each count of which a licensed pharmacy benefits manager has been convicted in a hearing before the Commissioner.

D. Any person injured as a result of a violation of this section may maintain a civil action in a court of competent jurisdiction to enjoin the practice or recover damages.

SECTION 6. This act shall become effective November 1, 2018.