

36 O.S. § 6958-6968	Patient’s Right to Pharmacy Choice Act
OSCN Website	Patient’s Right to Pharmacy Choice Act
§ 6960	Definitions
6960 (1)	“Health insurer” means any corporation, association, benefit society, exchange, partnership or individual licensed by the Oklahoma Insurance Code;
6960 (2)	“Health insurer payor” means a health insurance company, health maintenance organization, union, hospital and medical services organization or any entity providing or administering a self-funded health benefit plan;
6960 (3)	“Mail-order pharmacy” means a pharmacy licensed by this state that primarily dispenses and delivers covered drugs via common carrier;
6960 (4)	“Pharmacy benefits manager” or “PBM” means a person that performs pharmacy benefits management and any other person acting for such person under 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;
6960 (5)	“Provider” means a pharmacy, as defined in Section 353.1 of Title 59 of the Oklahoma Statutes or an agent or representative of a pharmacy;
6960 (6)	“Retail pharmacy network” means retail pharmacy providers contracted with a PBM in which the pharmacy primarily fills and sells prescriptions via a retail, storefront location;
6960 (7)	“Rural service area” means a five-digit ZIP code in which the population density is less than one thousand (1,000) individuals per square mile;
6960 (8)	“Spread pricing” means a prescription drug pricing model utilized by a pharmacy benefits manager in which the PBM charges a health benefit plan a contracted price for prescription drugs that differs from the amount the PBM directly or indirectly pays the pharmacy or pharmacist for providing pharmacy services;
6960 (9)	“Suburban service area” means a five-digit ZIP code in which the population density is between one thousand (1,000) and three thousand (3,000) individuals per square mile; and



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6960 (10)	“ Urban service area ” means a five-digit ZIP code in which the population density is greater than three thousand (3,000) individuals per square mile.
§ 6961	<u>Network Access</u>
6961 (A)	Pharmacy benefits managers (PBMs) shall comply with the following retail pharmacy network access standards: <ul style="list-style-type: none"> • (A)(1): At least ninety percent (90%) of covered individuals residing in an urban service area live within two (2) miles of a retail pharmacy participating in the PBM's retail pharmacy network; • (A)(2): At least ninety percent (90%) of covered individuals residing in an urban service area live within five (5) miles of a retail pharmacy designated as a preferred participating pharmacy in the PBM's retail pharmacy network; • (A)(3): At least ninety percent (90%) of covered individuals residing in a suburban service area live within five (5) miles of a retail pharmacy participating in the PBM's retail pharmacy network; • (A)(4): At least ninety percent (90%) of covered individuals residing in a suburban service area live within seven (7) miles of a retail pharmacy designated as a preferred participating pharmacy in the PBM's retail pharmacy network; • (A)(5): At least seventy percent (70%) of covered individuals residing in a rural service area live within fifteen (15) miles of a retail pharmacy participating in the PBM's retail pharmacy network; and • (A)(6): At least seventy percent (70%) of covered individuals residing in a rural service area live within eighteen (18) miles of a retail pharmacy designated as a preferred participating pharmacy in the PBM's retail pharmacy network.
6961 (B)	Mail-order pharmacies shall not be used to meet access standards for retail pharmacy networks.
6961 (C)	Pharmacy benefits managers shall not require patients to use pharmacies that are directly or indirectly owned by the pharmacy benefits manager, including all regular prescriptions, refills or specialty drugs regardless of day supply.
6961 (D)	Pharmacy benefits managers shall not in any manner on any material, including but not limited to mail and ID cards, include the name of any pharmacy, hospital or other providers unless it specifically lists all pharmacies, hospitals and providers participating in the preferred and nonpreferred pharmacy and health networks.
§ 6962	<u>Compliance - Prohibitions – Duties</u>
6962 (A)	The Attorney General shall review and approve retail pharmacy network access for all pharmacy benefits managers (PBMs) to ensure compliance with Section 6961 of this title.



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6962 (B)	<p>A PBM, or and agent of a PBM, shall not:</p> <ul style="list-style-type: none"> • (B)(1): Cause or knowingly permit the use of advertisement, promotion, solicitation, representation, proposal or offer that is untrue, deceptive or misleading; • (B)(2): Charge a pharmacist or pharmacy a fee related to the adjudication of a claim including without limitation a fee for: <ul style="list-style-type: none"> ○ (B)(2)(a): the submission of a claim, ○ (B)(2)(b): enrollment or participation in a retail pharmacy network, or ○ (B)(2)(c): the development or management of claims processing services or claims payment services related to participation in a retail pharmacy network; • (B)(3): Reimburse a pharmacy or pharmacist in the state an amount less than the amount that the PBM reimburses a pharmacy owned by or under common ownership with a PBM for providing the same covered services. The reimbursement amount paid to the pharmacy shall be equal to the reimbursement amount calculated on a per-unit basis using the same generic product identifier or generic code number paid to the PBM-owned or PBM-affiliated pharmacy; • (B)(4): Deny a provider the opportunity to participate in any pharmacy network at preferred participation status if the provider is willing to accept the terms and conditions that the PBM has established for other providers as a condition of preferred network participation status; • (B)(5): Deny, limit or terminate a provider's contract based on employment status of any employee who has an active license to dispense, despite probation status, with the State Board of Pharmacy; • (B)(6): Retroactively deny or reduce reimbursement for a covered service claim after returning a paid claim response as part of the adjudication of the claim, unless: <ul style="list-style-type: none"> ○ (B)(6)(a): the original claim was submitted fraudulently, or ○ (B)(6)(b): to correct errors identified in an audit, so long as the audit was conducted in compliance with Sections 356.2 and 356.3 of Title 59 of the Oklahoma Statutes; • (B)(7): Fail to make any payment due to a pharmacy or pharmacist for covered services properly rendered in the event a PBM terminates a provider from a pharmacy benefits manager network; • (B)(8): Conduct or practice spread pricing, as defined in Section 1 of this act, in this state; or • (B)(9): Charge a pharmacist or pharmacy a fee related to participation in a retail pharmacy network including but not limited to the following: <ul style="list-style-type: none"> ○ (B)(9)(a): an application fee, ○ (B)(9)(b): an enrollment or participation fee, ○ (B)(9)(c): a credentialing or re-credentialing fee, ○ (B)(9)(d): a change of ownership fee, or ○ (B)(9)(e): a fee for the development or management of claims processing services or claims payment services
6962 (C)	The prohibitions under this section shall apply to contracts between pharmacy benefits managers and providers for participation in retail pharmacy networks.
6962 (C)(1)	A PBM contract shall:



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	<ul style="list-style-type: none"> • (C)(1)(a): not restrict, directly or indirectly, any pharmacy that dispenses a prescription drug from informing, or penalize such pharmacy for informing, an individual of any differential between the individual's out-of-pocket cost or coverage with respect to acquisition of the drug and the amount an individual would pay to purchase the drug directly, and • (C)(1)(b): ensure that any entity that provides pharmacy benefits management services under a contract with any such health plan or health insurance coverage does not, with respect to such plan or coverage, restrict, directly or indirectly, a pharmacy that dispenses a prescription drug from informing, or penalize such pharmacy for informing, a covered individual of any differential between the individual's out-of-pocket cost under the plan or coverage with respect to acquisition of the drug and the amount an individual would pay for acquisition of the drug without using any health plan or health insurance coverage.
6962 (C)(2)	A pharmacy benefits manager's contract with a provider shall not prohibit, restrict or limit disclosure of information to the Attorney General, 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 the Patient's Right to Pharmacy Choice Act.
6962 (D)	<p>A pharmacy benefits manager shall:</p> <ul style="list-style-type: none"> • (D)(1): Establish and maintain an electronic claim inquiry processing system using the National Council for Prescription Drug Programs' current standards to communicate information to pharmacies submitting claim inquiries; • (D)(2): Fully disclose to insurers, self-funded employers, unions or other PBM clients the existence of the respective aggregate prescription drug discounts, rebates received from drug manufacturers and pharmacy audit recoupments; • (D)(3): Provide the Attorney General, insurers, self-funded employer plans and unions unrestricted audit rights of and access to the respective PBM pharmaceutical manufacturer and provider contracts, plan utilization data, plan pricing data, pharmacy utilization data and pharmacy pricing data; • (D)(4): Maintain, for no less than three (3) years, documentation of all network development activities including but not limited to contract negotiations and any denials to providers to join networks. This documentation shall be made available to the Attorney General upon request;
6962 (D)(5)	<p>Report to the Attorney General, on a quarterly basis for each health insurer payor, on the following information:</p> <ul style="list-style-type: none"> • (D)(5)(a): the aggregate amount of rebates received by the PBM, • (D)(5)(b): the aggregate amount of rebates distributed to the appropriate health insurer payor, • (D)(5)(c): the aggregate amount of rebates passed on to the enrollees of each health insurer payor at the point of sale that reduced the applicable deductible, copayment, coinsure or other cost sharing amount of the enrollee, • (D)(5)(d): the individual and aggregate amount paid by the health insurer payor to the PBM for pharmacy services itemized by pharmacy, drug product and service provided, and • (D)(5)(e): the individual and aggregate amount a PBM paid a provider for pharmacy services itemized by pharmacy, drug product and service provided



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§ 6963	<u>Monitoring - Not Restrict Choice - Mailing or Shipping</u>
6963 (A)	A health insurer shall be responsible for monitoring all activities carried out by, or on behalf of, the health insurer under the Patient's Right to Pharmacy Choice Act, and for ensuring that all requirements of this act are met.
6963 (B)	Whenever a health insurer contracts with another person to perform activities required under this act, the health insurer shall be responsible for monitoring the activities of that person with whom the health insurer contracts and for ensuring that the requirements of this act are met.
6963 (C)	An individual may be notified at the point of sale when the cash price for the purchase of a prescription drug is less than the individual's copayment or coinsurance price for the purchase of the same prescription drug.
6963 (D)	A health insurer or pharmacy benefits manager (PBM) shall not restrict an individual's choice of in-network provider for prescription drugs.
6963 (E)	An individual's choice of in-network provider may include a retail pharmacy or a mail-order pharmacy. A health insurer or PBM shall not restrict such choice. Such health insurer or PBM shall not require or incentivize using any discounts in cost-sharing or a reduction in copay or the number of copays to individuals to receive prescription drugs from an individual's choice of in-network pharmacy.
6963 (F)	A health insurer, pharmacy or PBM shall adhere to all Oklahoma laws, statutes and rules when mailing, shipping and/or causing to be mailed or shipped prescription drugs into the State of Oklahoma.
§ 6964	<u>Pharmacy and Therapeutics Committee (P&T Committee)</u>
6964 (A)	A health insurer's pharmacy and therapeutics committee (P&T committee) shall establish a formulary, which shall be a list of prescription drugs, both generic and brand name, used by practitioners to identify drugs that offer the greatest overall value.
6964 (B)	A health insurer shall prohibit conflicts of interest for members of the P&T committee.
6964 (B)(1)	A person may not serve on a P&T committee if the person is currently employed or was employed within the preceding year by a pharmaceutical manufacturer, developer, labeler, wholesaler or distributor.
6964 (B)(2)	A health insurer shall require any member of the P&T committee to disclose any compensation or funding from a pharmaceutical manufacturer, developer, labeler, wholesaler or distributor. Such P&T committee member shall be recused from voting on any product manufactured or sold by such pharmaceutical manufacturer, developer, labeler, wholesaler or distributor.



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§ 6965	<u>Power and Authority to Examine and Investigate - Files and Records - Inquiry - Third Party Consultants</u>
6965 (A)	The Attorney General shall have power and authority to examine and investigate the affairs of every pharmacy benefits manager (PBM) engaged in pharmacy benefits management in this state in order to determine whether such entity is in compliance with the Patient's Right to Pharmacy Choice Act.
6965 (B)	All PBM files and records shall be subject to examination by the Attorney General or by duly appointed designees. The Attorney General, authorized employees and examiners shall have access to any of a PBM's files and records that may relate to a particular complaint under investigation or to an inquiry or examination by the Attorney General.
6965 (C)	Every officer, director, employee or agent of the PBM, upon receipt of any inquiry from the Attorney General shall, within twenty (20) days from the date the inquiry is sent, furnish the Attorney General with an adequate response to the inquiry.
6965 (D)	When making an examination under this section, the Attorney General may retain subject matter experts, attorneys, appraisers, independent actuaries, independent certified public accountants or an accounting firm or individual holding a permit to practice public accounting, certified financial examiners or other professionals and specialists as examiners, the cost of which shall be borne by the PBM that is the subject of the examination.
§ 6966.1	<u>Penalties - Hearings - Enforcement - Right to Appeal - Report</u>
6966.1 (A)	The Insurance Commissioner may censure, suspend, revoke or refuse to issue or renew a license of or levy a civil penalty against any person licensed under the insurance laws of this state for any violation of the Patient's Right to Pharmacy Choice Act, Section 6958 et seq. of this title.
6966.1 (B)(1)	If the Attorney General finds, after notice and opportunity for hearing, that a pharmacy benefits manager (PBM) violated one or more provisions of the Patient's Right to Pharmacy Choice Act, the Pharmacy Audit Integrity Act or the provisions of Sections 357 through 360 of Title 59 of the Oklahoma Statutes, the Attorney General may recommend the PBM be censured, his or her license may be suspended or revoked and a penalty or remedy authorized by this act may be imposed. If the Attorney General makes such recommendation, the Commissioner shall take the recommended action.
6966.1 (B)(2)	In addition to or in lieu of any censure, suspension or revocation of a license, a PBM may be subject to a civil fine of not less than One Hundred Dollars (\$100.00) and not greater than Ten Thousand Dollars (\$10,000.00) for each violation of the provisions of the Patient's Right to Pharmacy Choice Act, the Pharmacy Audit Integrity Act or the provisions of Sections 357 through 360 of Title 59 of the Oklahoma Statutes, following notice and an opportunity for a hearing.
6966.1 (C)	Notwithstanding whether the license of a PBM has been issued, suspended, revoked, surrendered or lapsed by operation of law, the Attorney General is hereby authorized to enforce the provisions of the Patient's Right to Pharmacy Choice Act and impose any penalty or remedy authorized under the act against a PBM under investigation for or charged with a violation of the Patient's Right to Pharmacy Choice Act, the Pharmacy Audit Integrity Act, the provisions of Sections 357 through 360 of Title 59 of the Oklahoma Statutes or any provision of the insurance laws of this state.



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6966.1 (D)	Each day that a PBM conducts business in this state without a license from the Insurance Department shall be deemed a violation of the Patient's Right to Pharmacy Choice Act.
6966.1 (E)(1)	All hearings conducted by the Office of the Attorney General pursuant to this section shall be public and held in accordance with the Administrative Procedures Act.
6966.1 (E)(2)	Hearings shall be held at the office of the Attorney General or any other place the Attorney General may deem convenient.
6966.1 (E)(3)	The Attorney General, upon written request from a PBM affected by the hearing, shall cause a full stenographic record of the proceedings to be made by a competent court reporter. This record shall be at the expense of the PBM.
6966.1 (E)(4)	The ordinary fees and costs of the hearing examiner appointed pursuant to Section 319 of this title may be assessed by the hearing examiner against the respondent unless the respondent is the prevailing party.
6966.1 (F)	Any PBM whose license has been censured, suspended, revoked or denied renewal or who has had a fine levied against him or her shall have the right of appeal from the final order of the Attorney General, pursuant to Section 318 et seq. of Title 75 of the Oklahoma Statutes.
6966.1 (G)	If the Attorney General determines, based upon an investigation of complaints, that a PBM has engaged in violations of the provisions of the Patient's Right to Pharmacy Choice Act with such frequency as to indicate a general business practice, and that the PBM should be subjected to closer supervision with respect to those practices, the Attorney General may require the PBM to file a report at any periodic interval the Attorney General deems necessary.
§ 6967	<u>Confidentiality</u>
6967(A)	Documents, evidence, materials, records, reports, complaints or other information in the possession or control of the Insurance Department or the Right to Pharmacy Choice Commission that are obtained by, created by or disclosed to the Insurance Commissioner, Pharmacy Choice Commission or any other person in the course of an evaluation, examination, investigation or review made pursuant to the provisions of the Patient's Right to Pharmacy Choice Act, the Pharmacy Integrity Audit Act or Sections 357 through 360 of Title 59 of the Oklahoma Statutes 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 Insurance Commissioner, the Pharmacy Choice Commission or any employees or representatives of the Insurance Commissioner.
6967(B)	Nothing in this section shall prevent the disclosure of a final order issued against a pharmacy benefits manager by the Insurance Commissioner or Pharmacy Choice Commission. Such orders shall be open records.
6967(C)	In the course of any hearing made pursuant to the provisions of the Patient's Right to Pharmacy Choice Act, the Pharmacy Integrity Audit Act or Sections 357 through 360 of Title 59 of the Oklahoma Statutes, nothing in this section shall be construed to prevent



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	the Insurance Commissioner or any employees or representatives of the Insurance Commissioner from presenting admissible documents, evidence, materials, records, reports or complaints to the adjudicating authority.
§ 6968	<u>Severability</u>
6968	If any one or more provision, section, subsection, sentence, clause, phrase or word of this act or the application hereof to any person or circumstance is found to be unconstitutional, the same is hereby declared to be severable and the balance of this act shall remain effective notwithstanding such unconstitutionality. The Legislature hereby declares that it would have passed this act, and each provision, section, subsection, sentence, clause, phrase or word thereof, irrespective of the fact that any one or more provision, section, subsection, sentence, clause, phrase, or word be declared unconstitutional.



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