

**SENATE CHAMBER**  
**STATE OF OKLAHOMA**

DISPOSITION

FLOOR AMENDMENT

No. \_\_\_\_\_

\_\_\_\_\_

COMMITTEE AMENDMENT

\_\_\_\_\_

(Date)

Mr./Madame President:

I move to amend Senate Bill No. 841, by substituting the attached floor substitute for the title, enacting clause and entire body of the measure.

Submitted by:

\_\_\_\_\_  
Senator McCortney

McCortney-CB-FS-Req#1992  
2/25/2019 10:50 AM

(Floor Amendments Only) Date and Time Filed: \_\_\_\_\_

Untimely

Amendment Cycle Extended

Secondary Amendment

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 FLOOR SUBSTITUTE  
4 FOR

5 SENATE BILL NO. 841

6 By: McCortney

7 FLOOR SUBSTITUTE

8 [ insurance - Prescription Access and Affordability  
9 Act - codification - effective date ]

10  
11 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

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

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

24 For purposes of this act:

1        1. "Benefit plan" means any health benefit plan offered by a  
2 health insurance carrier, health maintenance organization, managed  
3 care entity, or any other entity that provides prescription drug  
4 benefits to covered individuals, including workers' compensation  
5 programs, state-administered health benefit plans and self-funded  
6 benefit programs;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11           a. the submission of a claim,

12           b. enrollment or participation in a retail pharmacy  
13 network,

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

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

18       3. Reimburse a pharmacy or pharmacist in the state an amount  
19 less than the amount that the pharmacy benefits manager reimburses a  
20 pharmacy owned by or under common ownership with a pharmacy benefits  
21 manager for providing the same covered services. The reimbursement  
22 amount shall be calculated on a per-unit basis using the same  
23 generic product identifier or generic code number submitted by the  
24 pharmacy benefits manager owned or affiliated pharmacy;

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

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

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

- 13           a. the original claim was submitted fraudulently, or
- 14           b. the pharmacy service provided related to the subject  
15           claim violated the Oklahoma Pharmacy Act; or

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

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

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

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

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

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

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

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

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

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

8 3. Expand pharmacy benefit plan coverage.

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

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

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

18 3. Expanded pharmacy benefit plan coverage.

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

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

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

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

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

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

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

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

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

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

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

- 1 a. an indication of whether each drug on the formulary is
- 2 preferred under the plan,
- 3 b. an indication of whether each drug on the formulary
- 4 requires prior authorization or has step therapy or
- 5 quantity limit restrictions,
- 6 c. the specific tier the drug falls under, if the health
- 7 insurer's plan uses a tiered formulary,
- 8 d. the amount of the drug copayment, if applicable,
- 9 e. the amount of the drug coinsurance, if applicable,
- 10 f. whether the drug is subject to a deductible, and if
- 11 so, the amount of the deductible,
- 12 g. whether the drug is included on the maximum allowable
- 13 cost list of the health insurer, and if so, the price
- 14 of the drug as established by the maximum allowable
- 15 cost list, and
- 16 h. for drugs not included on the maximum allowable cost
- 17 list of the health insurer, the average wholesale
- 18 price as established by the national pricing source.

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

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

1           A. The Commissioner shall provide for the receiving and  
2 processing of individual complaints alleging violations of the  
3 provisions of this act or with provisions of Sections 357 through  
4 360 of Title 59 of the Oklahoma Statutes.

5           B. The Commissioner shall establish a Prescription Access and  
6 Affordability Advisory Committee to review complaints, hold hearings  
7 and subpoena witnesses and records, initiate prosecution, reprimand,  
8 place on probation, suspend, revoke and levy fines not to exceed Ten  
9 Thousand Dollars (\$10,000.00) for each count for which any pharmacy  
10 benefits manager has been convicted in hearings by the committee.  
11 The committee may impose as part of any disciplinary action the  
12 payment of costs expended by the Department of Insurance for any  
13 legal fees and costs, including but not limited to staff time,  
14 salary and travel expense, witness fees and attorney fees. The  
15 committee may take such actions singly or in combination, as the  
16 nature of the violation requires.

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

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

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

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

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

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

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

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

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

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

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

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

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

20 A. Documents, materials, reports, complaints or other  
21 information in the possession or control of the Insurance Department  
22 that are obtained by or disclosed to the Commissioner or any other  
23 person in the course of an evaluation, examination, investigation or  
24 review made pursuant to the provisions of this act shall be

1 confidential by law and privileged, shall not be subject to open  
2 records request, shall not be subject to subpoena and shall not be  
3 subject to discovery or admissible in evidence in any private civil  
4 action if obtained from the Commissioner or any employees or  
5 representatives of the Commissioner.

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

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

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12 57-1-1992 CB 2/25/2019 10:50:55 AM

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