

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 HOUSE BILL 3116

By: Hilliard

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5
6 AS INTRODUCED

7 An Act relating to prescription drugs; providing for
8 pharmacy benefits management; defining terms;
9 specifying duties of pharmacy benefits managers;
10 requiring compliance when entering into certain
11 contracts; providing penalty; specifying
12 applicability of provisions; providing for
13 codification; and providing an effective date.

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

15 SECTION 1. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 353.31 of Title 59, unless there
17 is created a duplication in numbering, reads as follows:

18 A. As used in this section:

19 1. "Covered entity" means a nonprofit hospital licensed
20 pursuant to Section 1-702 of Title 63 of the Oklahoma Statutes, or
21 medical service organization, insurer, health coverage plan or
22 health maintenance organization, a health program administered by
23 the state in the capacity of provider of health coverage, or an
24 employer, labor union, or other group of persons organized in the
state that provides health coverage to covered individuals who are

1 employed or reside in the state. "Covered entity" does not include
2 a health plan that provides coverage only for accidental injury,
3 specified disease, hospital indemnity, Medicare supplement,
4 disability income, long-term care, or other limited benefit health
5 insurance policies and contracts;

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

12 3. "Generic drug" means a chemically equivalent copy of a
13 brand-name drug with an expired patent;

14 4. "Labeler" means an entity or person that receives
15 prescription drugs from a manufacturer or wholesaler and repackages
16 those drugs for later retail sale and that has a labeler code from
17 the federal Food and Drug Administration under the Code of Federal
18 Regulations, Title 21 C.F.R., Section 270.20 (1999);

19 5. "Pharmacy benefits management" means the procurement of
20 prescription drugs at a negotiated rate for dispensation within this
21 state to covered individuals, the administration or management of
22 prescription drug benefits provided by a covered entity for the
23 benefit of covered individuals, or any of the following services
24 provided with regard to the administration of pharmacy benefits:

- a. mail service pharmacy,
- b. claims processing, retail network management, and payment of claims to pharmacies for prescription drugs dispensed to covered individuals,
- c. clinical formulary development and management services,
- d. rebate contracting and administration,
- e. certain patient compliance, therapeutic intervention and generic substitution programs, and
- f. disease management programs; and

6. "Pharmacy benefits manager" means an entity that performs pharmacy benefits management. "Pharmacy benefits manager" includes a person or entity acting for a pharmacy benefits manager in a contractual or employment relationship in the performance of pharmacy benefits management for a covered entity and includes mail service pharmacy.

B. 1. A pharmacy benefits manager owes a fiduciary duty to a covered entity and shall discharge that duty in accordance with the provisions of state and federal law.

2. A pharmacy benefits manager shall perform its duties with care, skill, prudence, and diligence and in accordance with the standards of conduct applicable to a fiduciary in an enterprise of a like character and with like aims.

1 3. A pharmacy benefits manager shall notify the covered entity
2 in writing of any activity, policy, or practice of the pharmacy
3 benefits manager that directly or indirectly presents any conflict
4 of interest with the duties imposed by this subsection.

5 4. A pharmacy benefits manager shall provide to a covered
6 entity all financial and utilization information requested by the
7 covered entity relating to the provision of benefits to covered
8 individuals through that covered entity and all financial and
9 utilization information relating to services to that covered entity.
10 A pharmacy benefits manager providing information under this
11 paragraph may designate that material as confidential. Information
12 designated as confidential by a pharmacy benefits manager and
13 provided to a covered entity under this paragraph may not be
14 disclosed by the covered entity to any person without the consent of
15 the pharmacy benefits manager, except that disclosure may be ordered
16 by a court of this state for good cause shown or made in a court
17 filing under seal unless or until otherwise ordered by a court.
18 Nothing in this paragraph limits the use of civil investigative
19 demand authority by the Attorney General under the Oklahoma
20 Deceptive Trade Practices Act to investigate violations of this
21 section.

22 5. With regard to the dispensation of a substitute prescription
23 drug for a prescribed drug to a covered individual, the following
24 provisions apply:

- 1 a. if a pharmacy benefits manager makes a substitution in
2 which the substitute drug costs more than the
3 prescribed drug, the pharmacy benefits manager shall
4 disclose to the covered entity the cost of both drugs
5 and any benefit or payment directly or indirectly
6 accruing to the pharmacy benefits manager as a result
7 of the substitution, and
- 8 b. the pharmacy benefits manager shall transfer in full
9 to the covered entity any benefit or payment received
10 in any form by the act of the pharmacy benefits
11 manager of substituting a lower-priced generic and
12 therapeutically equivalent drug for a higher-priced
13 prescribed drug.

14 6. A pharmacy benefits manager that derives any payment or
15 benefit for the dispensation of prescription drugs within this state
16 based on volume of sales for certain prescription drugs or classes
17 or brands of drugs within this state shall pass that payment or
18 benefit on in full to the covered entity.

19 7. A pharmacy benefits manager shall disclose to the covered
20 entity all financial terms and arrangements for remuneration of any
21 kind that apply between the pharmacy benefits manager and any
22 prescription drug manufacturer or labeler including, without
23 limitation, formulary management and drug-switch programs,
24 educational support, claims processing, and pharmacy network fees

1 that are charged from retail pharmacies and data sales fees. A
2 pharmacy benefits manager providing information under this paragraph
3 may designate that material as confidential. Information designated
4 as confidential by a pharmacy benefits manager and provided to a
5 covered entity under this paragraph may not be disclosed by the
6 covered entity to any person without the consent of the pharmacy
7 benefits manager, except that disclosure may be ordered by a court
8 of this state for good cause shown or made in a court filing under
9 seal unless or until otherwise ordered by a court. Nothing in this
10 paragraph limits the use of civil investigative demand authority by
11 the Attorney General under the Oklahoma Deceptive Trade Practices
12 Act to investigate violations of this section.

13 C. Compliance with the requirements of this section is required
14 in all contracts for pharmacy benefits management entered into in
15 this state or by a covered entity in this state.

16 D. A violation of this section is a violation of the Oklahoma
17 Deceptive Trade Practices Act, for which a fine of not more than Ten
18 Thousand Dollars (\$10,000.00) may be adjudged.

19 E. This section applies to contracts executed or renewed on or
20 after November 1, 2010. For the purposes of this subsection, a
21 contract executed pursuant to a memorandum of agreement executed
22 prior to November 1, 2010, is deemed to have been executed prior to
23 November 1, 2010, even if the contract was executed after that date.

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SECTION 2. This act shall become effective November 1, 2010.

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