

**TITLE 365. INSURANCE DEPARTMENT
CHAPTER 25. OTHER LICENSEES**

SUBCHAPTER 29. PHARMACY BENEFITS MANAGERS

365:25-29-1. Purpose

The purpose of this Subchapter is to set forth the regulations and procedures relating to the licensing and oversight of pharmacy benefits managers under 59 O.S. §§ 357-360.

[Source: Added at 31 Ok Reg 697, eff 7-1-14 (emergency); Added at 32 Ok Reg 1972, eff 9-15-15]

365:25-29-2. Scope

This Subchapter shall apply to all pharmacy benefits managers which must be licensed pursuant to 59 O.S. § 358(A).

[Source: Added at 31 Ok Reg 697, eff 7-1-14 (emergency); Added at 32 Ok Reg 1972, eff 9-15-15]

365:25-29-3. Authority

This Subchapter is promulgated under the authority granted to the Insurance Commissioner in 59 O.S. § 358(B).

[Source: Added at 31 Ok Reg 697, eff 7-1-14 (emergency); Added at 32 Ok Reg 1972, eff 9-15-15]

365:25-29-4. Definitions

All definitions contained in 59 O.S. §§ 357-360 are applicable to this Subchapter and in addition:

- (1) "Day" means a calendar day, unless otherwise defined or limited.
- (2) The "act" means 59 O.S. §§ 357-360.
- (3) Pharmacy benefits manager and PBM may be used interchangeably in this Subchapter.

[Source: Added at 31 Ok Reg 697, eff 7-1-14 (emergency); Added at 32 Ok Reg 1972, eff 9-15-15]

365:25-29-5. Forms and contents of application for PBM license

An application for PBM License shall be on a form provided by the Commissioner and shall include:

- (1) The identity of the PBM and any company or organization controlling the operation of the PBM, including the name, business address, and contact person for the PBM and the controlling entity. For purposes of this subsection, "control" or "controlling" means the possession, direct or indirect, of the power to direct or cause the direction of the

management and policies of the PBM, whether through the ownership of voting securities, by contract or otherwise, unless the power is the result of an official position with or corporate office held by the person;

(2) The name and address of the corporate officers and directors, members and managers (if an LLC), or names of all partners (if a partnership) of the applicant PBM;

(3) A license fee in the amount of One Thousand Dollars (\$1,000.00);

(4) A "Certificate of Incorporation" or comparable organizational document from the domiciliary state of the PBM;

(5) In the case of a PBM domiciled without the State of Oklahoma, a certificate that the PBM is in good standing in the state of domicile or organization;

(6) A report of the details of any suspension, sanction, penalty or other disciplinary action relating to the PBM and its officers and directors;

(7) The name and address of the agent of record for services of process in Oklahoma;

(8) The number of total covered individuals or lives served under all of the PBM's contracts or agreements in Oklahoma;

(9) The most recently concluded fiscal year-end financial statements for the PBM and its controlling entity, which statements have been audited by an independent certified public accountant (CPA) under U.S. generally accepted accounting principles (GAAP); and

(10) A certificate signed by an Executive Officer of the PBM attesting to the accuracy of the information contained in the filing.

[Source: Added at 31 Ok Reg 697, eff 7-1-14 (emergency); Added at 32 Ok Reg 1972, eff 9-15-15]

365:25-29-6. Surety bond

(a) Prior to the issuance of a pharmacy benefits manager license, the PBM applicant shall file with the Commissioner and thereafter keep in effect, as long as the license remains in effect, a surety bond in an amount determined to be sufficient by the Commissioner. The bond shall be in a form acceptable to the Commissioner and for the purpose of securing conformity with the laws and regulations governing pharmacy benefits managers. The bond shall be for the benefit of parties protected by the provisions of 59 O.S. §§ 357-360.

(b) The surety bond must provide that no party may cancel the bond without first giving thirty (30) days written notice to the principal and the Commissioner.

(c) Absent a finding otherwise, a bond with limits of One Million Dollars (\$1,000,000.00) per occurrence and Five Million Dollars (\$5,000,000.00), annual aggregate, shall be deemed to be sufficient.

[Source: Added at 32 Ok Reg 1973, eff 9-15-15]

365:25-29-7. License term, renewals, fees

(a) An application fee shall not be refundable if the application is denied, withdrawn, cancelled, or refused for any reason by either the applicant or the Commissioner.

(b) The PBM license shall continue in force no longer than twelve (12) months from the original month of issuance. Upon filing a PBM license renewal application on a form provided by the

Commissioner, a renewal license may be issued by the Commissioner to a PBM licensee which is in compliance with the act, has continuously maintained such license, and has paid a renewal fee of Five Hundred Dollars (\$500.00).

(c) If the PBM fails to timely apply for renewal of its license or fails to pay any applicable fees or outstanding fines by the last day of the month in which the license was originally issued, the license shall expire automatically. After expiration, the PBM license may be reinstated for up to one (1) year following the expiration date upon filing a PBM license renewal application on a form provided by the Commissioner and the payment of a reinstatement fee of One Thousand Dollars (\$1,000.00). If after the one-year date the license has not been reinstated, the licensee shall be required to apply for a license as a new PBM licensee applicant.

(d) In the event that the Commissioner declines to issue or renew a PBM license, the Commissioner shall notify the applicant or licensee of such declination and advise the applicant or licensee, in writing, of the reason for the declination. The applicant or licensee may make written demand upon the Commissioner within thirty (30) days of the date of notification by the Commissioner, for a hearing before the Commissioner or an independent hearing examiner appointed by the Commissioner to determine the existence of the grounds for the Commissioner's action. The hearing shall be held within a reasonable time period pursuant to the Oklahoma Administrative Procedures Act.

[Source: Added at 32 Ok Reg 1973, eff 9-15-15]

365:25-29-8. PBM to file certain financial statements with the Commissioner

(a) Before March 1 of each year, every PBM providing pharmacy benefits management shall submit to the Insurance Commissioner a report of its financial condition verified by the oath of an executive officer. The report shall be prepared using generally accepted accounting principles and consist of a balance sheet, income statement, and statement of cash flows. The report may be supplemented by any additional information required by the Insurance Commissioner.

(b) The Commissioner may extend the time prescribed for filing annual or other reports or exhibits of any kind for good cause shown. However, the Commissioner shall not extend the time for filing annual statements beyond sixty (60) days after the time prescribed by this Section.

[Source: Added at 32 Ok Reg 1973, eff 9-15-15]

365:25-29-9. Contractual requirements—maximum allowable cost

(a) Regarding maximum allowable cost, contracts between a PBM and a provider shall conform to the following requirements:

- (1) Identify sources of information utilized by the PBM to create and modify the PBM's maximum allowable cost price specific to the pharmacy;
- (2) The PBM shall provide an electronic process, including but not limited to e-mail, for providers to readily access the MAC list specific to that provider. Upon a provider's written request, a PBM shall furnish its MAC list to the provider in paper form or other agreed format;

- (3) If a provider is unable to obtain a drug from a regional or national wholesaler at a price equal to or less than the PBM's MAC, the PBM shall provide a reasonable appeals procedure;
 - (4) A "reasonable appeals procedure" means a process which permits a provider or a provider's representative to contest a reimbursement amount based on the provider's contention that the drug is not generally available for purchase by pharmacies in the state at or below the PBM's Maximum Allowable Cost;
 - (5) A provider's appeal shall contain information including but not limited to the date of claim, National Drug Code number, and the identity of the national or regional wholesalers from which the drug was found to be unavailable for purchase by the provider, at or below the PBM's Maximum Allowable Cost;
 - (6) Appeals filed under this subsection shall be presented to the PBM within ten (10) business days following the prescription claim date. The PBM must respond to a provider within ten (10) business days following the receipt by the PBM of the notice that the provider is contesting the reimbursement amount;
 - (7) If a provider's appeal is denied, the PBM shall provide the reason for the denial, including the National Drug Code number and the identity of the national or regional wholesalers from whom the drug was generally available for purchase at or below the PBM's Maximum Allowable Cost;
 - (8) If a provider's appeal is found to be justified, the PBM shall make the correction to its MAC, permit the provider to reverse and re-bill the claim in question, and make the MAC correction applicable prospectively for all similarly contracted Oklahoma providers.
- (b) A PBM shall permit the submission of either paper or electronic documentation to perfect an appeal. A PBM shall not require the submission of appeals on an individual claim (non-batch) basis or refuse to accept appeals from a provider's designated representative or require procedures that have the effect of obstructing or delaying the appeal process. All MAC appeals shall be properly documented.
- (c) Before beginning business, and as contracts are amended thereafter, each PBM shall submit to the Insurance Commissioner a certificate signed by an executive officer of the PBM attesting that the Oklahoma provider contracts utilized by such PBM satisfy the requirements of 59 O.S. § 360 and this Subchapter.

[Source: Added at 32 Ok Reg 1973, eff 9-15-15]

365:25-29-10. Penalty for noncompliance

(a) After notice and opportunity for hearing, and upon determining that the PBM has violated any of the provisions of 59 O.S. §§ 357-360 of the Oklahoma Statutes, or this Subchapter, or upon finding the existence of grounds to refuse the issuance or renewal of such license, the Commissioner may suspend or revoke a PBM's license or assess a civil penalty of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00) for each instance of violation, or both. Each day that a pharmacy benefits manager conducts business in the State of Oklahoma without a license shall be deemed to be an instance of violation. The payment of the penalty may be enforced in the same manner as civil judgments may be enforced.

(b) Every PBM upon receipt of any inquiry from the Commissioner or the Commissioner's representative shall, within thirty (30) days from the date of inquiry, furnish the Commissioner or the Commissioner's representative with an adequate response to the inquiry.

[Source: Added at 32 Ok Reg 1974, eff 9-15-15]

365:25-29-11. "Doing pharmacy benefits management business in this state" defined—venue—exceptions

(a) The venue of any act listed in this Section shall be Oklahoma County.

(b) Any one of the following acts, in this state, effected by mail or otherwise, is defined to be doing pharmacy benefits management business in this state:

(1) The making of or proposing to make, as a PBM, a contract with a covered entity for the provision of pharmacy benefits management services to covered individuals residing in Oklahoma;

(2) The provision of pharmacy benefit management services to covered individuals residing in Oklahoma;

(3) Directly or indirectly acting as an agent for, or otherwise representing or aiding on behalf of another, any person or PBM in:

(A) the solicitation, negotiation, procurement, or effectuation of pharmacy benefits management contracts or services to citizens of this state;

(B) the transaction of matters subsequent to effectuation of a contract providing pharmacy benefits management services and arising out of it; or

(C) any other manner representing or assisting a person in the transaction of the business of pharmacy benefits management to residents in this state.

(c) The provisions of this section do not apply to transactions in this state involving a contract between a covered entity and a PBM not contracted to any provider in this state, that is lawfully solicited, written, and delivered outside of this state, covering only pharmacy benefits provided to individuals or entities not residing or located in this state.

[Source: Added at 32 Ok Reg 1974, eff 9-15-15]