



STATE OF OKLAHOMA
PATIENT’S RIGHT to PHARMACY CHOICE ADVISORY COMMITTEE

MINUTES OF THE ADVISORY COMMITTEE

January 21, 2021

The Patient’s Right to Pharmacy Choice Advisory Committee, established pursuant to the provisions of the Act, held a regular session meeting on January 21, 2021 at 10:00 a.m. The meeting was held in the Public Meeting Room of the offices of the Oklahoma Insurance Department at 400 NE 50th St. Oklahoma City, Oklahoma. In compliance with the Open Meeting Act, 25O.S. 301 et seq. the agenda for this meeting was posted at the main entrance of the Oklahoma Insurance Department at 400 NE 50th St. Oklahoma City, Oklahoma on October 20, 2020 at 10:00 a.m. and transmitted to the offices of the Advisory Committee members on October 20, 2020. The agenda is attached as Exhibit “A”.

I. **CALL TO ORDER.** Ronald White D.Ph. called the meeting to order at 10:00 a.m. The roll of Advisory Committee members was called to establish a quorum.

II. **COMMITTEE ROLL CALL.**

Advisory Committee members present were:

- Bill Moore
- Melanie Maxwell
- Toby Baldwin
- Jim Consedine
- Mark Lewandowski
- Rose Thomas-Bendel
- Brian Dixon

Based on the result of the roll call, a quorum was declared present.

Others in attendance were:

- Kim Bailey
- Ronald White
- Sara Worten
- Ashley Scott
- Rick Wagnon
- Mike Rhoads



Commissioner Mulready welcomed Committee members and announced a new member to the Advisory Committee, Judge Brian Dixon. The Commissioner also introduced the new OID General Counsel, Kim Bailey.

III. DISCUSSION AND ACTION TO DESIGNATE a CHAIRPERSON and VICE-CHAIRPERSON of the ADVISORY COMMITTEE.

Mr. White called for nominations for Chairperson from the floor. The following names were entered into nomination: Mark Lewandowski and Melanie Maxwell. After a roll call vote Mr. Lewandowski was designated as Chairperson for a one-year term.

Mr. White called for nominations for Vice-Chairperson from the floor. The following names were entered into nomination: Melanie Maxwell and Jim Consedine. After a roll call vote Mr. Consedine was designated as Vice-Chairperson for a one-year term.

Chairperson Lewandowski took over the proceedings of the meeting and called for an approval of the October 29, 2020, minutes of the Advisory Committee. The minutes were approved without objection. Mr. Lewandowski then directed the Committee to hear the PBM Complaint Cases as prepared by the Director of Pharmacy Regulatory Compliance.

IV PBM COMPLAINT CASE REVIEW -- 1

Mr. White referred four (4) cases to the Committee referenced as the following:
Case Z012121-01, Case Z012121-03, Case Z012121-05 and Case Z012121-06

Each of the cases involved specialty medication requested by an Oklahoma consumer/patient at a retail pharmacy. In each instance a rejection notice was sent stating the 'product/service is not appropriate for this location'. The rejection could not be overridden causing the consumer to be unable to obtain the medication at the pharmacy and forcing the patient to use a PBM mandated specialty pharmacy. Pharmacy Compliance reported that its investigations into the denials resulted in a variety of responses from the PBMs ranging from federal exemption under the statute to requiring the specialty medication to be dispensed from either a select pharmacy or be required to pay the full cost of the medication at the point of sale.

After much discussion by Committee members, it was determined that the cases were a material violation of the statute. The question was put forth as to whether each case rose to the level of violation of the statute and what recommendation the Committee thought appropriate to forward to the Insurance Commissioner.



Mr. Lewandowski made a motion, seconded _____ by Mr. Moore that a violation had occurred and a fine of \$5,000 would be imposed on each violation by the PBMs.

In lieu of a roll call vote the Chair called for a voice vote on the motion:
All yes, no objections to the motion.

PBM COMPLAINT CASE REVIEW -- 2

Mr. White referred two (2) cases to the Committee referenced as the following:
Case Y012121-01, Case Y012121-02.

These cases involved actions by PBMs that retroactively denied or reduced Rx claim payments to pharmacies involuntarily. Mr. White reported that, in each case, the PBM response was that the OID Regulatory and Compliance area did not have authority to investigate citing ERISA exemption. Notwithstanding the exemption claimed by the PBMs, the Compliance area conducted further review of the cases to determine if the retroactive reduction was a 'claw-back' of funds from the pharmacy, known as a Direct and Indirect Remuneration (DIR), or a case of 'spread pricing' that is in widespread practice by the PBMs.

After much discussion, the Committee came to the consensus that the cases involved were examples of spread pricing and not a claw-back from the complainant pharmacies. The Committee agreed that spread pricing is not prohibited under Oklahoma law however there was no disclosure by the PBMs involved that the transaction would result in a lower reimbursement to the pharmacy and a higher out-of-pocket to the patient/consumer.

A motion to TABLE administrative action by the Committee was made by Mr. Moore, seconded by Mr. Consedine instructing the Compliance Department to conduct additional review of complaints of this nature and bring them back to the Committee for discussion. Mr. Lewandowski asked if there was objection to the motion and hearing none it was approved.

In further action, Ms. Maxwell MOVED to request additional research by the OID be undertaken to review the feasibility of making a legislative change that would clarify if, how and when consumer protections could be incorporated into law that would clarify requirements by the PBMs in their practice of both claw-back and spread pricing. Mr. Consedine seconded. The Chair asked if there were any objections to the motion and hearing none it was approved.

PBM COMPLAINT CASE REVIEW -- 3

Mr. White referred three (3) cases to the Committee referenced as the following:



Case X012121-07, Case X012121-01 and Case X012121-04.

These cases involved complaints received by pharmacies that reported PBMs denied network entry or otherwise did not offer contracts to an affiliated PSAO (Pharmacy Services Administrative Organization) that acts on behalf of the pharmacy as their agent to perform multiple business functions with a PBM. Mr. White reviewed the current practice by pharmacies to contract with PSAOs and when a PSAO is denied access to a PBM contract the result is that the patient/consumer right to choose is limited.

The Committee discussion focused on the result of PBMs limiting the number of PSAOs it contracts with and possibly creating a violation related to reduced consumer access to pharmacy choice. No violation would exist if the PBM extended network participation to a pharmacy in either standard or preferred retail form. But with the exclusion of some PSAO arrangements there is no clear indication that the PBM complies with the consumer access requirement. Mr. White reviewed the network adequacy requirements required under the statute and informed that requests for reports that substantiate the adequacy reports have been requested from the PBMs (due date is 2/14/2021).

A motion to TABLE further discussion on these matters was made by Mr. Moore, seconded by Mr. Baldwin, until the network adequacy reports were received and reviewed by Regulatory Compliance. The Chair asked if there were any objection to tabling the item until the February 18th Advisory committee meeting. There were no objections and Ms. Maxwell abstained from the vote.

V. DIRECTOR'S REPORT

Mr. White gave a brief report on the activities related to the Regulatory Compliance area.

VI. NEW BUSINESS

There was no new business before the committee.

VII. ADJOURNMENT

The Advisory Committee adjourned at 12:05 pm.

Prepared by Benna Nye, PBM Regulatory Compliance