



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

MINUTES OF THE ADVISORY COMMITTEE

February 18, 2021

The Patient’s Right to Pharmacy Choice Advisory Committee, established pursuant to the provisions of the Act, held a special session meeting on February 18, 2021 at 10:00 a.m. The meeting took place virtually or by phone due to the weather that had transpired. 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 February 8, 2021 and transmitted to the offices of the Advisory Committee members on February 8, 2021. The agenda is attached as Exhibit “A”.

I. CALL TO ORDER Mark Lewandowski, Chairman, 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 (late arrival)
- Melanie Maxwell
- Toby Baldwin (late arrival)
- Jim Consedine
- Rose Thomas-Bendel
- Brian Dixon

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

Others in attendance were: Ronald White, D.Ph., Mike Rhoads, Rick Wagon, Kim Bailey, Benna Nye, Haley Faulkenberry. Outside interested parties (total of 6) were also noted on the call.

III. REVIEW AND APPROVAL OF THE MINUTES

Mr. Lewandowski advised Committee members that the minutes of the January 21, 2021 meeting had been sent out with today’s meeting notice, agenda, and asked if there were any changes or modifications. Hearing none – Mr. Consedine moved, seconded by Ms. Maxwell that the minutes be approved. The motion was passed without objection.

IV. PBM COMPLAINT CASE REVIEW

Ron White, Director of PBM Regulatory Compliance, referred the Committee to a spreadsheet that summarized the cases to be reviewed by the members. He pointed out the new format that will be used to facilitate Committee discussion of similarly situated complaints filed with the Compliance Department and, in recognition of their similarity, address them as a group.

CATEGORY 1: COMPLAINTS REFERRED TO NETWORK PROVIDER OR AFFILIATED WITH THE PBM/HEALTH PLAN

These complaints are brought forward in potential violation of O.S. 36, Sections 6961(C), 6963(E). The nature of these complaints involves the following:

- Consumers are being directed to PBM owned mail order pharmacy after in-network non-preferred retail claims are denied.
- Consumers are incentivized to use PBM mail order without fill limitations.
- In-network non-preferred retail pharmacies are limited to 30 days dispensing and a limited number of fills per prescription.

The Committee was presented with 14 cases/complaints. After much discussion by the 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 Ms. Maxwell that a violation had occurred and a fine of \$3,000 would be imposed on each violation by the PBMs. An amendment to the motion was made by Ms. Maxwell that would create a differential of fine amounts when the complaint involved a referral to a PBM-owned mail order pharmacy. In this instance, the fine would be set at \$5,000 per occurrence while a referral to a non-owned pharmacy would be set at \$3,000 per occurrence. The motion was seconded by Mr. Dixon. With acceptance of the amended motion, the Chair asked for approval: all members signified support with no objections. Mr. Baldwin and Mr. Moore abstained from voting since they had missed portions of the discussion.

Further discussion by the Committee on the topic of violations of this nature took place, specifically related to recurring and consistent complaints received by the Compliance Department. A requested was made by Ms. Maxwell that a policy statement be developed by staff and brought back to Committee at the next meeting that address progressive disciplinary actions related to the issue. Ms. Maxwell also asked that an additional column be added to the spreadsheet that would identify the specific complaint filed. Mr. White agreed to supply the additional information.

CATEGORY 2: COMPLAINTS INVOLVING NETWORK CONSUMER SHARE (CO-PAY) DIFFERENTIAL

These complaints were brought forward as a potential violation of 36 O.S. § 6963(E). Two (2) complaints were identified where PBMs failed to administer the same out of pocket at mail order as Non-Preferred Retail. Additionally, consumers are being incentivized by PBMs to use mail order with larger quantity and less out of pocket to select PBM-owned mail order pharmacy.

After discussion by the Committee, Ms. Maxwell made a motion to impose a two-tiered fine structure, wherein a \$5,000 fine would be recommended when PBMs directed consumers to use a PBM-owned pharmacy; \$3,000 fine when directed to 'neutral' mail order pharmacy.

The motion was seconded by Mr. Consedine. The Chair asked for approval of the motion: all members signified support with no objections.

CATEGORY 3: CONSUMER MANDATED SPECIALTY PHARMACY

These complaints were brought forward as a potential violation of 36 O.S. § 6961(C). Two (2) complaints were identified where consumers were being directed to use a PBM-owned specialty pharmacy. It was pointed out that in-network non-preferred or preferred pharmacies have had all specialty claims denied referring the consumer to use a PBM-owned Specialty Pharmacy.

After discussion by the Committee, Mr. Baldwin moved to impose a fine of \$10,000/occurrence along with a letter of reprimand from Compliance to the PBM's cited for the violation. Motion was seconded by Ms. Thomas-Bendel. The Chair asked for approval of the motion: all members signified support with no objections.

CATEGORY 4: PBM'S CHARGING FEE TO BE CREDENTIALLED AND ADDED TO THE PHARMACY NETWORK

These complaints were brought forward as a potential violation to 36 O.S. § 6962(B)(2). Two (2) complaints were identified where PBM's were assessing credentialing fees to be added to the network. In its discussion, the Committee heard remarks that this was a "pay to Play" arrangement; that most PBM's consider credentialing expense to be a cost of doing business; a leveraging mechanism against pharmacies.

After discussion, Mr. Lewandowski moved to impose a fine of \$2,000/occurrence. Ms. Maxwell seconded the motion. All Committee members indicated support for the motion, none objected.

CATEGORY 5: LATE (UNTIMELY) RESPONSE BY A PBM TO A COMPLAINT

These complaints were brought forward as a potential violation of 36 O.S. § 6965(C). Fifteen (15) complaints were identified where the PBM failed to respond to the request made by the Regulatory Compliance Department within the statutory 30-day requirement. The Committee observed that the practice of failing to respond to a complaint was still commonplace among PBMs and discussed the need for a policy statement to be drafted by staff addressing this

situation (see related request in Category 1 complaints). Suggested components of the policy would be a set standard amount imposed for the violation, a letter outlining a progressive disciplinary process and authority for the Regulatory Compliance Department to fast track violations to the OID Legal Department for action.

On the issue of the fifteen complaints presented, a motion was made by Mr. Consedine, seconded by Mr. Baldwin to impose a fine of \$5,000/occurrence with appropriate communication to the PBM as recommended by Legal. All Committee members indicated support for the motion, none objected.

V. DIRECTOR'S REPORT

Mr. White provided the Committee a review of PBM complaints received in the Department as of 2/15/2021, along with a report on PBM complaint tracking. The Committee accepted the report.

VI. NEW BUSINESS

There was no new business before the committee.

VII. ADJOURNMENT

The Chairman adjourned the Advisory Committee meeting at 12:00 pm.