



STATE OF OKLAHOMA  
PATIENT'S RIGHT TO PHARMACY CHOICE ADVISORY COMMITTEE  
MINUTES OF THE ADVISORY COMMITTEE

April 15, 2021

The Patient's Right to Pharmacy Choice Advisory Committee, established pursuant to the provisions of the Act, held a special session meeting on April 15, 2021 at 10:00 a.m. The meeting was held in person, by via virtual platform and by conference call originating from the offices of the Oklahoma Insurance Department at 400 NE 50<sup>th</sup> St. Oklahoma City, Oklahoma. In compliance with the Open Meeting Act, 25 O.S. 301 et seq. the agenda for this meeting was posted at the main entrance of the Oklahoma Insurance Department at 400 NE 50<sup>th</sup> St. Oklahoma City, Oklahoma and transmitted to the offices of the Advisory Committee members.

**I. CALL TO ORDER**

In the absence of the Chairman, the Vice-Chair, Jim Consedine, called the meeting to order at 10:00 a.m.

A roll call of Advisory Committee members was called to establish a quorum.

**II. COMMITTEE ROLL CALL**

Advisory Committee members present were:

Jim Consedine
Rose Thomas-Bendel
Bryan Dixon
Toby Baldwin
Mark Lewandowski*

\*Mr. Lewandowski joined the meeting at 10:10 a.m.

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

Others in attendance: Kelli Price, Rick Wagnon, Mike Rhoads, Benna Nye. Outside interested parties were also noted on the call.

**III. REVIEW AND APPROVAL OF THE MINUTES**

Acting Chairman Consedine advised Committee members that the minutes of the March 18, 2021 meeting had been sent out with today's meeting notice and agenda and asked if there were any changes or modifications. Hearing no changes, Judge Dixon moved, seconded by Mr. Baldwin that the minutes be approved. The motion was passed without objection.

**IV. STAFFING CHANGES**

Kelli Price was called upon to update the Committee on staffing changes that had taken place with the PBM Regulatory Compliance team. She reported that Ron White had resigned as Director of the program but would be available as a part-time consultant going forward. Additionally, it was reported that Rick Koch, Investigator in the OID Anti-fraud Division, would be joining the compliance area as Interim Lead Investigator over the four OID Field Representatives that had been reassigned to the area to conduct investigations.

## **V. FOLLOW-UP ON GEO ACCESS REPORTS**

Ms. Price reported that a second round of requests had been sent to 43 PBMs (this number is being reviewed for accuracy) on March 18, 2021. Letters requesting access reports were earlier sent on January 15, 2021 but resulted in calls to the staff for clarity on the elements of access being requested. It was reported that communications had improved after the second request for information. As of the meeting date, four (4) PBMs had submitted reports that met the requirements of the request. The report deadline is April 19, 2021. A spreadsheet was included in the meeting documents providing the Committee with the status of reports by PBMs.

Chairman Lewandowski requested that a sample GEO Access report be presented at the next meeting. Ms. Price will place this on the upcoming Committee agenda.

Mr. Consedine, acknowledging the difficulties in obtaining the reports, asked if compliance to reporting, as required under the statute, could be tied to the annual licensing renewal criteria for PBMs. This matter will be researched with a review of the rules and a determination made as to the feasibility of making the change. A report on this topic will be brought back to the Committee at the next meeting.

## **VI. PBM COMPLAINTS AND LICENSE REVIEW**

Ms. Price reviewed the twelve (12) complaint types that had been established through the complaint process. Each were defined and briefly discussed. A review of a series of new letters to be sent to the PBMs on several of the complaint types was also covered.

Ms. Price provided information from the previous Committee meeting dealing with committee members questions.

- The requested list of Oklahoma Licensed PBMs was included as a handout. As mentioned above a reconciliation of the number of PBMs identified will be reported back to the Committee at the next meeting.
- The question also dealing with accurate licensing information was addressed. It was reporting that the PBM Compliance continues to research this issue taking into consideration PBM mergers, renaming, and other factors. A final report will be brought back to the Committee at the next meeting.
- A report showing distribution of PBMs as to size was covered. The report was based on the only factor available to the staff which is the number of complaints filed. Since

market share data is not available the complaint report by PBM serves as a proxy for the information requested until more data can be made available. Ms. Price did report national marketplace share data (2018) showing the following distribution: CVS-30%, Express Scripts-24%, Optum-23%, Humana-7%, Med Impact-6% Prime-6%. She further reported that the national numbers do not correlate to the complaint distribution data. Of the complaints filed only eleven (11) of the licensed forty-three (43) PBMs have complaints registered with the compliance area.

To the previous question of what action should be taken if a progressive discipline program is adopted by the compliance area it was reported that a reprimand-suspension-revocation approach would be appropriate but dependent upon a case-by-case review and the history of responsiveness before an order would be issued to proceed to a hearing. The Regulatory Compliance area would be required to prove that an unfair trade practice had taken place.

Discussion took place on other items by the Committee. It was reported that the rate of new complaints had slowed to 10-12 per day but the staff is forecasting an increased volume in the months ahead. Two questions will be brought back to the committee at the next meeting: 1) Is it a violation if the PBM has denied the consumer to opt out of preferred mail order and choose instead to have prescriptions filled/refilled in a non-preferred network? 2) What options do pharmacies have when they choose to not accept PBM reimbursement? What are the rural pharmacy implications of this decision?

## **VII.        ADJOURNMENT**

There being no new business, Mr. Lewandowski motioned to adjourn, seconded by Mr. Considine. Motion was approved. Adjournment: 11:35 a.m.

Next Meeting: May 20, 2021.