

**TITLE 75. ATTORNEY GENERAL  
CHAPTER 45. PHARMACY BENEFIT MANAGEMENT  
COMPLIANCE AND ENFORCEMENT**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**75:45-1-1. Purpose** [NEW]

This chapter sets forth definitions, rules of procedure, and for hearings governed by the Attorney General for pharmacy benefit management enforcement compliance and enforcement.

**75:45-1-2. Definitions** [NEW]

The following words or terms, when used in this chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Administrative Law Judge" means a licensed Oklahoma attorney who has been appointed as an administrative law judge by the Attorney General to oversee and conduct administrative hearings.

"Attorney General" means the Attorney General of the State of Oklahoma who serves as the chief law officer of the state pursuant to 74 O.S. § 18.

"Administrative Hearings Division" means the administrative judicial forum where administrative law judges appointed by the Attorney General to hear cases where the Office of the Attorney General has jurisdictional authority.

"Office of the Attorney General" means the state agency where the Attorney General serves as the agency head.

"Supreme Court" means the Supreme Court of the State of Oklahoma.

**SUBCHAPTER 2. RULES OF PROCEDURE**

**75:45-2-1. General Provisions** [NEW]

(a) Confidentiality. All parties and the Administrative Law Judge shall have a duty to preserve the confidentiality of protected health information of patients as required under federal or state law.

(b) Public hearings. All hearings conducted by the Office of the Attorney General shall be public and held in accordance with the Administrative Procedures Act. The use of cameras or other audio-visual recording equipment shall comply with Rule 39.1 of the Oklahoma County District Court Rules.

(c) Computation of time. When filing documents in the proceeding, the following provisions apply:

(1) Filing deadlines. In computing any period of time, begin on the day after the act or event, and conclude on the last day of the computed period, unless it be a Saturday, Sunday, or legal holiday, in which the period runs until the end of the next day which is neither a Saturday, Sunday, nor a legal holiday.

(2) Filing and evidence of filing. Documents required to be filed are considered filed on the date of personal service of such documents or upon the date of the postmark showing date mailed on the envelope containing such documents and must show a date on or before the last day of filing as defined above.

(3) **Use of certified or registered mail.** If the document is sent by United States registered mail, the date of registration of the document shall be treated as the postmarked date. If the document is sent by United States certified mail and the sender's receipt is postmarked by the postal employee, the date of the United States postmark on such receipt shall be treated as the postmark date of the document. Thus, the risk that the document will not be postmarked on the day that it is deposited in the mail may be overcome by the use of registered mail or certified mail.

**75:45-2-2. Office of Administrative Hearings and Administrative Law Judge [NEW]**

(a) **Appointments.** The Attorney General may appoint administrative law judges as needed.

(b) **Office of Administrative Hearings.** The court setting for all hearings and matters considered by administrative law judges appointed by the Attorney General shall be conducted in a forum known as the Office of Administrative Hearings.

(c) **Session hours.** Unless otherwise ordered by the assigned administrative law judge, the morning sessions shall begin at 9:00 a.m. and close at 12:00 noon, and the afternoon sessions shall begin at 1:30 p.m. and close at 4:30 p.m.

(d) **Assigned administrative law judge.** An administrative law judge shall have complete authority to conduct the proceedings and may take any action not inconsistent with the provisions of the rules of this Chapter or of the APA for the maintenance of order at hearings and for the expeditious, fair, and impartial conduct of the proceedings. The assigned administrative law judge has the discretion to waive, supplement, or modify any requirement of the applicable law or rule of procedure where permitted by law and when the administration of justice requires. The assigned administrative law judge may also:

(1) arrange and issue notice of the date, time and place of hearings and conferences;

(2) establish the methods and procedures to be used in the presentation of the evidence;

(3) hold conferences to settle, simplify, determine, or strike any of the issues in a hearing, or to consider other matters that may facilitate the expeditious disposition of the hearing;

(4) administer oaths and affirmations;

(5) regulate the course of the hearing and govern the conduct of participants;

(6) examine witnesses;

(7) rule on, admit, exclude and limit evidence;

(8) establish the time for filing motions, testimony, and other written evidence, briefs, findings, and other submissions, and hold the record open for such purposes;

(9) rule on motions and other pending procedural matters; and

(10) divide the hearing into stages or combine interests of parties whenever the number of parties is large or the issues are numerous and complex.

(e) **Hearing Clerk.** The Hearing Clerk is the person designated by the Attorney General to assist the Chief Administrative Law Judge and maintain the administrative hearing files and dockets within the Office of Administrative Hearings.

(f) **Ex parte communications.** Communication with the assigned administrative law

judge or their office regarding scheduling and procedural matters is permitted. A lawyer shall have no ex parte communication on the substance of a pending matter or proceeding with the assigned administrative law judge.

**(g) Disqualification of Administrative Law Judge.**

(1) The administrative law judge shall withdraw from any proceeding in which they cannot accord a fair and impartial hearing or consideration, stating on the record the reasons therefore, and shall immediately notify all parties of the withdrawal.

(2) Any party may file a motion requesting the administrative law judge withdraw on the basis of personal bias or other disqualification and specifically setting forth the reasons for the request. This motion shall be filed as soon as the party has reason to believe there is a basis for the disqualification. The administrative law judge shall rule on the motion and make a recommendation to the Attorney General. The Attorney General shall review the recommendation of the administrative law judge and make a final determination on disqualification.

**75:45-2-3. Commencement of Proceeding and Service of Notice [NEW]**

(a) **Petition & Notice.** A petition and notice of hearing shall comply with the notice requirements under the Administrative Procedures Act. At any time following the filing of a petition and notice of hearing, any party may request the administrative law judge hold a scheduling conference to set hearing dates and discovery deadlines. The administrative law judge shall hold a scheduling conferencing within thirty (30) days of a party's request.

(b) **Service of Notice.** Service of notice shall be complete upon personal service, upon receipt of a return of service card showing receipt of certified mail by the addressee, or upon the posting of notice or last publication thereof.

**75:45-2-4. Legal Representation and Appearances [NEW]**

(a) **Legal Representation.** All parties must appear through counsel licensed by the Oklahoma Supreme Court and in good standing with the Oklahoma Bar Association. Counsel not licensed by the Oklahoma Supreme Court who has complied with the requirements of Article II, Section 5 of the Oklahoma Bar Association Rules may appear on behalf of a party with leave of the administrative law judge.

(b) **Entry of Appearance.** Attorneys who appear on behalf of a party shall notify the Office of Administrative Hearings of their appearance by filing an entry of appearance.

**75:45-2-5. Pleadings [NEW]**

(a) **Filings.** All filings shall be made with the Office of Administrative Hearings. Staff with the Office of Administrative Hearings will be responsible for placing a date-stamp on any pleadings filed by a party.

(b) **Initiating a Proceeding.** Proceedings may be initiated before the Office of Administrative Hearings by the Oklahoma Attorney General's Office by filing with the Office of Administrative Hearings a Petition or other instrument that seeks any relief authorized by law.

(1) **Proceedings initiated by Petition.** Each Petition shall name the Respondent and include a statement of the legal authority and jurisdiction under which the proceeding is to be held, a reference to the particular sections of the statutes and rules involved, a short and plain statement of the matters asserted giving a right to

relief, the relief requested, and, unless provided in a separate written Notice of Hearing, the time, place and nature of the hearing. If the Office of the Attorney General is unable to give a short and plain statement of the matters asserted at the time the notice is served, the initial notice may be limited to a statement of the issues involved.

**(c) Motions, Applications, and Briefs.** When filing motions and/or briefs in a proceeding, the following provisions apply:

**(1) Margins and page length.** All written submissions shall be typewritten in clear type not less than 12-point, with single-spaced lines of quoted matter and double-spaced lines of unquoted matter. The margins of the printed page shall be one and one-quarter (1 1/4) inches on the left side and one (1) inch on the other three sides.

**(2) Accompanied by proposed order.** Motions and applications are to be accompanied by a proposed order.

**(3) Length.** All motions, applications and responses thereto, including briefs, shall not exceed twenty (20) pages in length, excluding exhibits, without prior permission of the assigned administrative law judge. A request for enlargement of page length may accompany the written instrument filed. Reply briefs shall be limited to five (5) pages in length. Page limitations herein exclude only the cover, if used, index, appendix, signature line and accompanying information identifying attorneys and parties, and certificate of service. No further briefs shall be filed without prior permission of the assigned administrative law judge. Exceptions to this requirement are not favored. This limitation on page limits does not apply to initial filings.

**(4) When responses are due.** Unless otherwise ordered by the assigned administrative law judge, objections to motions or responses to written submissions are due within fifteen (15) days of receipt. Replies to objections or to responses to written submissions are due within ten (10) days of receipt. Exceptions to this requirement may be granted upon application and for good cause shown.

**(5) Hearings upon motions or applications.** The assigned administrative law judge shall decide any motion or application without hearing based upon the written submissions of the parties unless the assigned administrative law judge determines that an evidentiary hearing is necessary for a proper resolution of the issue(s) submitted.

**(6) Disposition of unopposed motions.** Dispositive motions that are unopposed may be deemed to be confessed and, where appropriate, may result in the summary disposition of a claim or defense as applicable.

**(7) Motions filed close to hearing.** Motions may not be filed within ten (10) days of the hearing unless based upon a sudden emergency of facts that could not have been previously known. Copies of such motions must be hand-delivered to all parties of record.

**(8) Motions will not stay discovery.** Motions to Dismiss or for Summary Disposition will not stay any discovery deadline unless by a written agreement of the parties that has been communicated to the assigned administrative law judge.

**(9) Citations of authority.** Legal citations are to be made in accordance with Rule 1.200 the Oklahoma Supreme Court Rules. If an unpublished case or a case cited

by a special reporter is cited as persuasive authority a copy must be attached to the document citing the case.

(d) **Service of pleadings.** Service of pleadings shall comply with the provisions of the Oklahoma Pleading Code.

(1) **Service of Initial Pleading.** Any instruments initiating an administrative proceeding must be served on every named Respondent by either personal service, certified mail, return receipt requested, restricted delivery, or issuing a report by hand-delivery. If service is being sent by certified mail, return receipt requested, and the intended Respondent refuses to sign the return receipt or otherwise does not sign or is unavailable to sign and accept service through the certified mail at the address identified on records from the Office of the Attorney General, then Respondent is deemed to have been served. If service is by personal service, the person serving the instrument initiating an administrative proceeding shall file proof of service with the Hearing Clerk within seven (7) days of service or before the date of the first hearing, whichever is sooner. Acknowledgment in writing by the Respondent, or their legal counsel, or by appearing at the hearing without objection to service is equivalent to service.

(2) **Service of Other Papers and Documents.** Service of all other documents and papers connected with a proceeding shall be served on the parties or their counsel by delivering a copy or mailing a copy by first class mail, postage prepaid.

(3) **Service of Responsive Pleadings.** Any party served with a petition, an application for an administrative fine, an administrative order or other instrument providing notice of a claim or defense to a claim initiating a proceeding before the Attorney General shall file a written response or answer within twenty (20) days of receipt of the petition, application, order or other instrument initiating a proceeding. The response or answer must be filed with the Hearing Clerk of the Office of Administrative Hearings and a copy must be delivered or mailed to all other parties by 5:00 p.m., on the 20th day. Delivery to other parties must be made in person, by process server, or may be sent by certified mail, return receipt requested, or restricted delivery. Every defense, in law or fact, to a claim for relief in any petition, application or administrative order initiating an administrative proceeding shall be asserted in the responsive pleading.

(e) **Signature block.** All pleadings shall be signed and include the signature block for the counsel submitting the pleading. The signature block shall include the name of the attorney, bar number, firm name (if applicable), address, telephone number, and email address for all attorneys of record.

#### **75:45-2-6. Discovery [NEW]**

(a) **Discovery Code.** The Attorney General hereby adopts the Oklahoma Discovery Code, 12 O.S. §§ 3224–3237, to govern discovery under the Act.

(b) **Record.** Unless ordered by the Administrative Law Judge, discovery shall not be filed in the record.

(c) **Timing.** Discovery shall be open for a minimum of ninety (90) days. Unless good cause is shown or by agreement of the parties, no discovery shall not exceed one hundred eighty (180) days.

#### **75:45-2-7. Subpoenas** [NEW]

**(a) Issuance.** The Attorney General hereby adopts the Oklahoma Pleading Code, 12 O.S. § 2001-2100, to govern subpoenas under the Act. All parties shall have the authority to issue subpoenas under the Oklahoma Pleading Code.

**(b) Failure to obey.** The party issuing the subpoena may seek an appropriate judicial proceeding to compel compliance by persons who fail to obey a subpoena, who refuse to be sworn or make an affirmation at a hearing or who refuse to answer a proper question during a hearing. The hearing shall proceed despite any such refusal but the assigned administrative law judge may, in their discretion at any time, continue the proceedings as necessary to secure a court ruling.

**(c) Motions to quash.** Motions to quash subpoenas may be filed with the Office of Administrative Hearings and may be decided by the assigned administrative law judge. The assigned administrative law judge shall not quash a subpoena if any party objects.

#### **75:45-2-8. Evidence** [NEW]

The Attorney General hereby adopts the Oklahoma Evidence Code, 12 O.S. §§ 2101–2611.2, to govern proceedings under the Act.

#### **75:45-2-9. Protective orders** [NEW]

**(a) Automatic Protective Order.** At the time that a matter has been filed with the Office of Administrative Hearings all personal health information of any party or witness that comes into the possession of a party to pending matter is subject to an automatic protective order. The automatic protective order generally limits any party in possession of such information from publishing the information to any third party without first making application to the assigned administrative law judge supported by good cause. Third parties shall not include any person employed or affiliated with an attorney or their office who is representing a party to the proceeding. Third parties also do not include consultants or expert witnesses retained by an attorney or their office.

**(b) General Protective Orders.** Unless provided in subsection (a) of this subchapter of rules, all other protective orders shall be governed by the Oklahoma Discovery Code, 12 O.S. §§ 3224–3237, and 51 O.S. § 24A.29. It is the responsibility of the attorney to ensure all consultants and/or expert witnesses comply with the provisions of the rules governing automatic protective orders.

#### **75:45-2-10. Motion for Summary Disposition** [NEW]

Following the close of discovery, a party may file a motion for summary disposition on any or all issues on the ground that there is no genuine dispute as to any material fact. The procedures for such a motion are as follows:

**(a)** The motion for summary disposition shall be accompanied by a concise written statement of the material facts as to which the movant contends no genuine issue exists and a statement of argument and authority demonstrating that summary disposition of any or all issues should be granted. The moving party shall verify the facts to which such party contends no genuine controversy exists with affidavits and evidentiary material attached to the statement of material facts.

**(b)** If the case has been set for a hearing on the merits, a motion for summary disposition

shall be served at least twenty (20) days before the hearing date unless an applicable scheduling order issued by the administrative law judge establishes an earlier deadline. The motion shall be served on all parties and filed with the Office of Administrative Hearings.

(c) Any party opposing summary disposition of issues shall file with the administrative law judge within fifteen (15) days after service of the motion a concise written statement of the material facts as to which a genuine issue exists and the reasons for denying the motion. The adverse party shall attach to the statement evidentiary material justifying the opposition to the motion but may incorporate by reference material attached to the papers of the moving party. All material facts set forth in the statement of the movant that is supported by acceptable evidentiary material shall be deemed admitted for the purpose of summary disposition unless specifically controverted by the statement of the adverse party which is supported by acceptable evidentiary material.

(d) The affidavits that are filed by either party shall be made on personal knowledge, shall show that the affiant is competent to testify as to the matters stated therein and shall set forth matters that would be admissible in evidence at a hearing. A party challenging the admissibility of any evidentiary material submitted by another party may raise the issue expressly by written objection or motion to strike such material.

(e) If a party has requested a hearing, the administrative law judge will issue a notice to the parties scheduling the motion for a hearing limited to oral argument. If the party has not requested a hearing, the administrative law judge will rule on the motion based on the submission of the parties, including the motion, opposition to the motion, and attachments thereto.

(f) If the administrative law judge finds that there is no substantial controversy as to the material facts and that one of the parties is entitled to a decision in its favor as a matter of law, the administrative law judge will grant summary disposition by issuing Findings of Fact, Conclusions of Law, and Recommendations. Such Findings of Fact, Conclusions of Law, and Recommendations are subject to review by the Attorney General under OAC 75:45-2-16. If a motion for summary disposition is denied, the administrative law judge will issue an order denying such motion. The Attorney General is not required to review a denial of a motion for summary disposition.

(g) If the administrative law judge finds that there is no substantial controversy as to certain facts or issues, the administrative law judge may grant partial summary disposition by issuing an order within twenty (20) business days of the hearing that specifies the facts or issues that are not in controversy and directing that the action proceed for a determination of the remaining facts or issues. If a hearing of factual issues is required, evidentiary rulings in the context of the summary procedure shall be treated as rulings in limine. Any ruling on partial summary disposition shall be incorporated into the Findings of Fact, Conclusions of Law, and Recommendations issued at the conclusion of the proceedings before the administrative law judge. Such Findings of Fact, Conclusions of Law, and Recommendations are subject to review by the Attorney General under OAC 75:45-2-16.

#### **75:45-2-11. Hearings [NEW]**

(a) **Conflict between APA and Rules.** Unless in conflict with the Administrative Procedures Act ("APA"), the order of procedure in all proceedings shall be governed by

this Chapter. In the event of a conflict between the APA and this Chapter, the APA controls. To the extent that this Chapter is more specific than the APA, the Attorney General intends for the rules in this Chapter to control.

(b) **Notice of Hearings.** The Attorney General, the Chief Administrative Law Judge, or the assigned administrative law judge, shall schedule the date, time, and place of any hearing in accordance with these rules. The Hearing Clerk shall notify the parties. The initial hearing shall be scheduled at least thirty (30) days after the date of service of the initial filing. If a specific law requires a hearing in fewer days, that statute shall be followed.

(c) **Hearing Proceedings.** At the hearing, each party may make a brief opening statement; present witnesses, documents, and exhibits on its behalf; and cross-examine adverse witnesses. The right to make a closing statement or argument shall be at the discretion of the assigned administrative law judge. At the discretion of the assigned administrative law judge, any party may reopen the case in chief, even after the adverse party has rested. Parties may stipulate to any lawful matter.

(d) **Recording.** All pre-hearing proceedings and hearings shall be electronically recorded as required by section 309 of the Administrative Procedures Act.

(e) **Court reporter.** Upon written request to the Office of Administrative Hearings, a hearing will be electronically recorded and transcribed by a certified court reporter. The requesting party must make necessary arrangements with the Office of Administrative Hearings, bear the cost of the reporter's attendance, and bear the cost of the transcription of the proceeding. The requesting party shall furnish the administrative law judge an original and all counsel of record in a case a copy of the transcript.

(f) **Testimony under oath.** The testimony of witnesses shall be under oath or affirmation, and the making of false statements may subject a witness to the penalties of perjury.

(g) **Standards of proof.** The standard of proof in all proceedings affecting or prejudicing a license, registration, permit, certification, or other authorization to engage in a given livelihood or occupation shall be clear and convincing evidence. In all other matters the standard of proof shall be a preponderance of the evidence.

(h) **Rulings.** The assigned administrative law judge shall rule on the admissibility of evidence and objections to evidence, and on motions or objections raised during hearings. All objections shall be made promptly or be deemed waived. Parties shall be deemed to have taken exception to any adverse ruling.

(i) **Fees.** The ordinary fees and costs of a hearing may be assessed by an administrative law judge against the respondent unless the respondent is the prevailing party. No fees shall be assessed against the Attorney General or Office of the Attorney General.

#### **75:45-2-12. Pre-hearing procedure [NEW]**

(a) **Purpose.** All matters pending before the Office of Administrative Hearings are subject to pre-hearing procedures determined by the assigned administrative law judge to be appropriate for a prompt and efficient resolution to matter. At least one pre-hearing conference will routinely be ordered unless the assigned administrative law judge determines the same to be unnecessary.

#### **(b) Pre-hearing Conference Procedure.**

(1) The pre-hearing conference shall be used to resolve any dispute or matter the resolution of which would promote the orderly and prompt conduct of the pre-hearing process or a hearing on the merits. The assigned administrative law judge



may hold more than one prehearing conference, convert a pre-hearing conference into a scheduling conference, or hold a final pre-hearing conference to formulate the plan to streamline the hearing on the merits. The conference shall be informal, structured by the assigned administrative law judge and not open to the public. No witnesses shall appear or present evidence.

(2) The assigned administrative law judge shall notify the parties of the date, time, and place of any pre-hearing conference at least ten (10) days before the scheduled date. A pre-hearing conference may be held by electronic or virtual means.

(3) If a record is requested by the parties, the conference may be recorded by audio tape and/or transcribed by a court reporter at the requesting party's expense.

(4) If a final pre-hearing conference is ordered, the attorneys and/or any unrepresented parties shall confer prior to the final pre-hearing conference and prepare a single suggested Pre-hearing Conference Order for use during the conference and the hearing on the merits. Any party unable to secure the cooperation of another party may submit their own proposed Pre-hearing Conference Order and, if the other party's cooperation is shown to be without cause, request that the other party's Proposed Pre-hearing Conference Order be stricken. A Pre-hearing Conference Order must follow substantially the form provided in Rule 5 of the Rules for District Court, 12, O.S., Ch.2, App.

(5) The administrative law judge shall issue an order within ten (10) business days of a pre-hearing conference. Such order, when entered, controls the subsequent course of the proceeding, unless modified by the administrative law judge.

#### **75:45-2-13. Continuances** [NEW]

Each party is entitled to a single continuance of the hearing on the merits upon request submitted at least three (3) days in advance of the hearing unless exigent circumstances make such notice impractical. Additional continuances may be granted only upon good cause. Motions for a continuance based upon cause shall be in writing and filed with the Office of Administrative Hearings with a copy to the parties and the assigned administrative law judge. A motion for a continuance shall state the reason(s) for the request and specify the length of time requested.

#### **75:45-2-14. Default** [NEW]

Any Respondent who fails to appear as directed, after service of the instrument initiating an administrative proceeding as provided by these rules, may be determined to have waived the right to appear and present a defense to the allegations contained in the instrument that initiates a proceeding. A default judgment order in such proceeding may be issued by the assigned administrative law judge and reviewed by the Attorney General under OAC 75:45-2-16, granting by default the relief prayed for in the petition.

#### **75:45-2-15. Sanctions for noncompliance** [NEW]

The assigned administrative law judge may take any action allowed by law against any party as a sanction for any non-compliance with the rules in this chapter, including, but not limited to, imposition of costs and fees, including attorney's fees, monetary sanctions not to exceed \$10,000, and/or by granting default.

**75:45-2-16. Findings, conclusions, and recommendations** [NEW]

(a) **The Attorney General.** The Attorney General shall be the ultimate authority in approving all final orders, conclusions, and recommendations of an administrative law judge.

(b) **Issuance.** After the record in an administrative proceeding is closed and submitted, the administrative law judge shall issue Findings, Conclusions, and Recommendations to the Attorney General for final consideration. The Findings, Conclusions, and Recommendations will include a statement of facts, the issues and contentions, conclusions based on the findings of fact and applicable law, and recommendations by the administrative law judge to the Attorney General who can make a binding recommendation to the Insurance Commissioner, if applicable. The parties to the proceeding will be mailed copies of the administrative law judge's Findings, Conclusions, and Recommendations. The assigned administrative law judge may take the cause of action under advisement and shall issue an order within twenty (20) business days.

(c) **No appeal.** No appeal may be based upon the Findings, Conclusions, and Recommendations issued by the administrative law judge until a final review and decision has been made by the Attorney General.

**75:45-2-17. Motion for Rehearing, Reopening, or Reconsideration** [NEW]

Motions for rehearing, reopening, or reconsideration shall comply with section 317 of the Administrative Procedures Act and must be submitted in writing. Oral motions for rehearing, reopening, or reconsideration will not be heard.

**75:45-2-18. Appeal venue** [NEW]

Appeals shall be taken pursuant to section 318 of the Administrative Procedures Act in the District Court of Oklahoma County.

**75:45-2-19. Settlement agreements and consent orders** [NEW]

Unless precluded by law, a proceeding may be resolved by a settlement or consent order. A settlement or consent order shall be approved by the Attorney General. Consent orders shall first be approved by the assigned administrative law judge prior to obtaining the approval of the Attorney General.

**75:45-2-20. Record** [NEW]

(a) **Records maintained.** The record of a proceeding and the file containing the notices and the pleadings will be maintained in a location designated by the Office of Administrative Hearings. All pleadings, motions, orders and other papers submitted for filing in such a proceeding shall be date/file-stamped by the Office of Administrative Hearings upon receipt. The burden of showing substantial prejudice by any failure to correctly file-stamp any submission shall be upon the party asserting the same.

(b) **Designation on appeal.** On appeal, the parties may designate and counter-designate portions of the record pursuant to the Administrative Procedures Act.

**75:45-2-21. Access to hearing records pursuant to the Open Records Act** [NEW]

(a) **Official records.** For purposes of this section, “official records” means any record that was created as a result of a public hearing by the Office of Administrative Hearings.

(b) **Access to official records.** Requestors may request records pertaining pharmacy benefit management compliance and enforcement in writing to the Office of the Attorney General, either electronically or by mail.

### **SUBCHAPTER 3. PHARMACY BENEFIT MANAGERS**

#### **75:45-3-1. Purpose** [NEW]

This subchapter sets forth definitions and procedures for Pharmacy Benefit Managers as governed by the Attorney General.

#### **75:45-3-2. Definitions** [NEW]

The following words or terms, when used in this subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"**Act**" means the Patient’s Right to Pharmacy Choice Act.

"**Pharmacy benefits manager**" or "**PBM**" means a person who performs pharmacy benefits management activities and any other person acting for such person under a contractual or employment relationship in the performance of pharmacy benefits management for a covered entity.

"**Pharmacy benefits management**" means the administration and/or management of prescription drug benefits provided by a covered entity under the terms and conditions of the contract between the pharmacy benefits manager and the covered entity.

#### **75:45-3-3 Power and Authority to Examine and Investigate** [NEW]

(a) **Power and Authority of the Attorney General.** The Attorney General shall have the power and authority under 36 O.S. § 6965 to examine and investigate the affairs of every pharmacy benefits manager (PBM) engaged in pharmacy benefits management in this state in order to determine whether such entity is in compliance with 59 O.S §§ 357-360 and 36 O.S. §§ 6958-6968.

(b) **Timing of the Attorney General to Examine a PBM.** The Attorney General may examine the PBM at any time under 36 O.S. § 6965 in which the Attorney General believes it reasonably necessary to ensure compliance with 59 O.S §§ 356-360 and 36 O.S. §§ 6958-6968 or provisions of this subchapter.

(c) **Examination of PBM Files and Records.** All PBM files and records shall be subject to examination by the Attorney General or by duly appointed designees. The Attorney General, or any authorized employees and examiners, shall have access to any of a PBM's files and records that may relate to a particular complaint under investigation or to an inquiry or examination by the Attorney General.

(d) **Duty to Respond to an Inquiry.** Every officer, director, employee or agent of the PBM, upon receipt of any inquiry from the Attorney General, shall, within twenty (20) days from the date the inquiry is sent, furnish the Attorney General with an adequate response to an inquiry from the Attorney General’s Office.

(e) **Subject Matter Experts and Investigative Costs.** When making an examination under 36 O.S. § 6965, the Attorney General may retain subject matter experts, attorneys, appraisers, independent actuaries, independent certified public accountants or an

accounting firm or individual holding a permit to practice public accounting, certified financial examiners or other professionals and specialists as examiners, the cost of which shall be borne by the PBM that is the subject of the examination. Nothing requires that a formal action be filed against the PBM to recover costs associated with an examination under 36 O.S. § 6965.

#### **75:45-3-4. Contractual Requirements [NEW]**

##### **(a) Maximum Allowable Cost.**

(1) **Contracts.** Contracts between a PBM and a provider shall conform to the following requirements:

(A) Identify sources of information utilized by the PBM to create and modify the PBM's maximum allowable cost price specific to the pharmacy;

(B) The PBM shall provide an electronic process, including but not limited to e-mail, for its pharmacy 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;

(C) 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 multisource drug product reimbursement, the PBM shall provide a reasonable appeals procedure to contest the multisource drug product reimbursement amount; under this section, a "reasonable appeals procedure" means a process which permits a provider or a provider's representative to contest a multisource drug product reimbursement amount based on the provider's contention that the drug is not generally available for purchase by Oklahoma pharmacies in the state at or below the PBM's multisource drug product reimbursement;

(D) 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 multisource drug product reimbursement;

(E) Appeals filed under this subsection shall be presented to the PBM within ten (10) business days following the final adjusted payment 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 multisource drug product reimbursement amount;

(F) 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 by providers in the state at or below the PBM's multisource drug product reimbursement;

(G) If a provider's appeal is found to be justified, the PBM shall make a change in the multisource drug product reimbursement amount, permit the provider to reverse and re-bill the claim in question, and make the multisource drug product reimbursement amount change applicable prospectively for all similarly contracted Oklahoma providers.

(2) **Submitting an Appeal.** 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 multisource drug product reimbursement appeals shall be properly documented.

(3) **Required Certificate from PBM.** Before beginning business, and as contracts are amended thereafter, each PBM shall submit to the Office of the Attorney General a certificate signed by an executive officer of the PBM attesting that the Oklahoma provider contracts utilized by such PBM satisfy the requirements of the act.

(b) **Relationship of PBM.** The relationship between a PBM and an insurer or other payor is controlled by contract whereby the PBM acts on behalf of the payor to facilitate the delivery of prescription medication benefits provided by such payor. Requirements and limitations contained within the act and applicable to such payors must be understood within this payor-contractor relationship.

(c) **Interaction Between PBM and Retail Pharmacy Network Providers.** The act requires or limits certain conduct in the interaction between the PBM and retail pharmacy network providers. Consequently, the Attorney General's Office hereby requires that every insurer utilizing the services of a pharmacy benefit manager shall be responsible, as follows:

(1) for approving all contractual documents utilized by its contracted PBMs and its retail pharmacy network to ensure compliance with the act;

(2) for conducting an annual audit of transactions and practices utilized by its contracted PBMs and members of its retail pharmacy network to ensure compliance with the act; and

(3) any exceptions found shall be reported to the Attorney General's Office pursuant to the Attorney General's examination authority.

#### **75:45-3-5 Retail Pharmacy Network Access - Audit [NEW]**

(a) **Authority.** The Attorney General shall review and approve retail pharmacy network access for all pharmacy benefits managers (PBMs) to ensure compliance with 36 O.S. § 6961.

(b) **Standards.**

(1) 36 O.S. § 6960 defines a member of a "retail pharmacy network" as meaning retail pharmacy providers contracted with a PBM on behalf of a payor in which the pharmacy primarily fills and sells prescription medicine via retail storefront location.

(2) Pursuant to 36 O.S. § 6961(B), mail-order pharmacies shall not be used to meet access standards for retail pharmacy networks.

(3) Pursuant to 36 O.S. § 6961(C), PBMs shall not require patients to use pharmacies that are directly or indirectly owned by a PBM, including all regular prescriptions, refills, or specialty drugs regardless of the day supply.

(4) Pursuant to 36 O.S. § 6961(D), PBMs shall not in any manner on any material, including but not limited to mail and ID cards, include the name of any pharmacy, hospital, or other providers unless it specifically lists all pharmacies, hospitals, and providers.

(c) **Required Monitoring by PBM.** A PBM's retail pharmacy network access shall be monitored for compliance with this act by those insurers that utilize the services of such PBM. Health insurers are required to maintain retail pharmacy network access in conformity with the requirements set forth in 36 O.S. § 6961.

(d) **Required Annual Audit by PBM.** Every PBM shall conduct a network adequacy audit on an annual basis. If the audit reveals the percentage of covered individuals is less than one hundred and five percent (105%) above any of the required percentages in 36 O.S. § 6961, the PBM shall conduct semi-annual network adequacy audits until such time that an audit indicates that the percentage of covered individuals is more than five percent 5% above the required percentage. A PBM shall submit all audit reports on network adequacy, including any semi-annual network adequacy audits, to the Attorney General.

(e) **Timing to Submit Audit Findings and Reports.** The audits must be completed within ninety (90) days of the effective date of 36 O.S. § 6958-6968 and annually each year thereafter. The results of any audits shall be reported to the Attorney General within thirty (30) days of the completion of the audit. All mailed documents must be directed to the attention of the "PBM Enforcement and Compliance Unit." The PBM Enforcement and Compliance Unit may issue further guidance to PBMs on the process for submitting required reports to the Attorney General's Office.

#### **75:45-3-6. Penalties for Enforcement, Non-compliance, and Recovery of Costs** [NEW]

(a) **Recommendations to the Insurance Commissioner by the Attorney General.** After notice and opportunity for hearing before an administrative law judge, and upon an order of the administrative law judge that has been approved by the Attorney General that a PBM has violated any of the provisions of 36 O.S. §§ 6958-6968 of the Oklahoma Statutes or the administrative rules set out in Title 75 of the Oklahoma Administrative Code, the Attorney General may make a recommendation to the Insurance Commissioner that a PBM's license be suspended or revoked and/or that fines, of not less than One Hundred Dollars (\$100.00) and no greater than Ten Thousand Dollars (\$10,000.00), for each count, be levied against any PBM that has violated the provisions of 36 O.S. §§ 6958-6971. The Insurance Commissioner shall accept and adopt any recommendation of the Attorney General pursuant to 36 O.S. § 6966.1.

(b) **Final Order of the Attorney General.** In addition to the remedies in subsection (a), and after notice and opportunity for hearing before an administrative law judge, a PBM may be subject to a civil fine of not less than One Hundred Dollars (\$100.00) and not greater than Ten Thousand Dollars (\$10,000.00) for each violation of the provisions of the Patient's Right to Pharmacy Choice Act, the Pharmacy Audit Integrity Act or the provisions of Sections 357 through 360 of Title 59 of the Oklahoma Statutes. Any order issued under this subsection shall be approved by the Attorney General.

(c) **Closer Supervision Related to a General Business Practice.** If the Attorney General determines, based upon an investigation of complaints, that a PBM has engaged in violations of the provisions of the Patient's Right to Pharmacy Choice Act with such frequency as to indicate a general business practice, and that the PBM should be subjected to closer supervision with respect to those practices, the Attorney General may require the PBM to file a report at any periodic interval the Attorney General deems

necessary.

(d) **Failure to Respond to an Inquiry.** Failure to respond timely to an inquiry from the Attorney General's Office shall be grounds for sanctions pursuant to this section, including, but not limited to, fines of at least One Hundred Dollars (\$100) and shall not exceed Ten Thousand Dollars (\$10,000), for each violation, and/or a binding recommendation from the Attorney General to the Insurance Commissioner that a PBM's license be censured, suspended, or revoked. The payment of expenses incurred by the Attorney General's Office for any legal fees and costs including, but not limited to, staff time, salary and travel expenses, witness fees, and attorney fees, may be levied as part of any non-compliance with this section.

(e) **Penalty for Failure to Timely Submit Audit or Report Findings.** Failure to respond timely to the deadline to file an audit or examination report shall be considered a violation of OAC: 75:45-3-4 and/or 36 O.S. § 6962. Unless an agreement by a PBM and the Attorney General has been entered into regarding the timing to submit an audit or examination report, a PBM shall be subjected to an administrative fine of at least five hundred dollars (\$500) per day for each day the PBM fails to comply with the reporting requirements.

(f) **Restitution and Cost Recovery.** Restitution may be levied as part of any disciplinary action against a PBM to be paid to the provider or patient involved. In addition to restitution, the cost of recovery related to the disciplinary action may be levied against a PBM for expenses incurred by the Attorney General's Office for any legal fees and costs including, but not limited to, staff time, salary, and travel expense, witness fees, and attorney fees.

(g) **Investigative Costs.** When making an examination under 36 O.S. § 6965, the Attorney General may retain subject matter experts, attorneys, appraisers, independent actuaries, independent certified public accountants or an accounting firm or individual holding a permit to practice public accounting, certified financial examiners or other professionals and specialists as examiners, the cost of which shall be borne by the PBM that is the subject of the examination. Nothing requires that a formal action be filed against the PBM to recover costs associated with an examination under 36 O.S. § 6965.

(h) **Enforcement.** The payment of any penalty issued pursuant to these rules may be enforced in the same manner as civil judgments may be enforced.