

**THE CITY OF OKLAHOMA CITY
OFFICE OF
THE MUNICIPAL COUNSELOR**

Council Agenda
Item No. XI. W
11/19/2024

TO: Mayor and City Council

FROM: Kenneth Jordan, Municipal Counselor

1. Resolution authorizing and directing the Municipal Counselor to negotiate a legal service contract for the purpose of litigating, at no cost to taxpayers, to recover overcharges for insulin;

AND/OR

2. Enter into executive session on advice of the Municipal Counselor, as authorized by 25 O.S. (2024 Supp.) § 307(B)(4), to receive confidential communications from its attorney concerning potential participation in litigation addressing overcharges for insulin prescribed to City employees, dependents and retirees, because disclosure of the communications would seriously impair the ability of the public body to conduct such potential litigation in the public interest.

Background

The healthcare plans for The City of Oklahoma City provide employee, dependents and retirees with access to prescription medication, including insulin. The City healthcare plans utilize Pharmacy Benefit Managers (PBM) to negotiate prices of drugs with drug manufacturers. The City employees, dependents and retirees can then purchase prescription drugs at a discounted price, generally \$15 to \$60. The City, through the OCMFA, then pays the remainder of the cost for those enrolled in the City's self-funded plans or by premiums paid by a fully insured HMO plan. The cost of manufacturing insulin has not significantly increased in the past 30 years, but the price for insulin charged by pharmaceutical manufacturers and PBMs has increased significantly.

The Federal Trade Commission and the Attorney General for the state of Oklahoma have both filed actions to recover overcharges made by pharmaceutical companies, including excessive rebates from pharmaceutical companies back to PBMs. The state of California and the City of Cleveland have filed similar actions attacking the pricing practices of pharmaceutical companies and PBMs and seeking to reduce the cost of insulin to its insureds.

The Resolution authorizes the Municipal Counselor to negotiate a legal service agreement on behalf of The City of Oklahoma City with qualified and experienced legal counsel to institute litigation in response to insulin overcharges. The agreement will be a contingency fee-based agreement with all costs and attorney fees to paid from any recovery or settlement, so that there is no up-front expense incurred by Oklahoma City tax payers for prosecuting said litigation, The risk for all costs and fees will be on the contracted legal counsel. Any attorney's fees earned by the legal counsel will be paid out of the settlement recovery or jury verdict, if any.