

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 84th General Assembly
3 Regular Session, 2003

A Bill

SENATE BILL 313

4
5 By: Senator Malone
6
7

For An Act To Be Entitled

8
9 AN ACT TO PROVIDE FOR THE REGULATION AND
10 LICENSING OF PHARMACY BENEFIT MANAGERS; TO
11 PROVIDE FOR CERTAIN POWERS AND DUTIES OF CERTAIN
12 STATE AGENCIES AND OFFICERS; TO PRESCRIBE
13 PENALTIES; AND FOR OTHER PURPOSES.
14

Subtitle

15
16 TO PROVIDE FOR THE REGULATION AND
17 LICENSING OF PHARMACY BENEFIT MANAGERS.
18
19

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
21

22 SECTION 1. Arkansas Code Title 17, Chapter 92, is amended to add an
23 additional subchapter to read as follows:

24 17-92-1101. Title.

25 This subchapter shall be known and may be cited as the "Arkansas
26 Pharmacy Benefit Management Regulation Act".
27

28 17-92-1102. Purpose and intent.

29 (a)(1) This subchapter establishes standards and criteria for the
30 regulation and licensing of pharmacy benefit managers.

31 (2) The purpose of this subchapter is to:

32 (A) Promote, preserve, and protect the public health,
33 safety, and welfare through effective regulation and licensing of Pharmacy
34 Benefit Managers;

35 (B) Provide for certain powers and duties for certain
36 state agencies and officers; and



1 (C) Prescribe penalties for violations of this subchapter.

2 (b) A pharmacy benefit manager is subject to this subchapter if the
3 pharmacy benefit manager provides claims processing services, other
4 prescription drug or device services, or both, to patients who are residents
5 of Arkansas.

6 (c) No pharmacy benefit manager shall do business or provide services
7 in Arkansas unless the pharmacy benefit manager is in full compliance with
8 this subchapter.

9

10 17-92-1103. Definitions.

11 For purposes of this subchapter:

12 (1) "Board" means the Arkansas State Board of Pharmacy;

13 (2) "Cease and desist order" means an order of the board or
14 commissioner prohibiting a pharmacy benefit manager, other person, or entity
15 from continuing a particular course of conduct which violates this subchapter
16 or rules adopted under this subchapter;

17 (3) "Claims processing services" means the administrative services
18 performed in connection with the processing and adjudication of claims
19 relating to pharmacist's services, including, but not limited to, making
20 payments to pharmacists and pharmacies;

21 (4) "Commissioner" means the Insurance Commissioner;

22 (5) "Maintenance drug" means a drug prescribed by a practitioner who
23 is licensed to prescribe drugs and used to treat a medical condition for a
24 period greater than thirty (30) days;

25 (6) "Multi source drug" means a drug that is stocked and available
26 from three (3) or more suppliers;

27 (7) "Other prescription drug or device services" means services other
28 than claims processing services, provided directly or indirectly by a
29 pharmacy benefit manager, whether in connection with or separate from claims
30 processing services, including, but not limited to:

31 (A) Negotiating rebates, discounts, or other financial
32 incentives and arrangements with drug companies;

33 (B) Disbursing or distributing rebates;

34 (C) Managing or participating in incentive programs or
35 arrangements for pharmacist's services;

36 (D) Negotiating or entering into contractual arrangements with

1 pharmacists, pharmacies, or both;

2 (E) Developing formularies;

3 (F) Designing prescription benefit programs; or

4 (G) Advertising or promoting claims processing services or other
 5 prescription drug or device services;

6 (8) "Pharmacist" means an individual licensed as a pharmacist by the
 7 board;

8 (9) "Pharmacist's services" means the practice of pharmacy as defined
 9 in § 17-92-101;

10 (10) "Pharmacy" means pharmacy as defined in § 17-92-101;

11 (11)(A) "Pharmacy benefits manager" means a person, business or other
 12 entity, and any wholly or partially owned or controlled subsidiary of a
 13 pharmacy benefits manager, that provides claims processing services, other
 14 prescription drug or device services, or both, to third parties.

15 (B) "Pharmacy benefits manager" does not include:

16 (i) Health care facilities licensed in Arkansas;

17 (ii) Healthcare professionals licensed in Arkansas;

18 (iii) Pharmacies licensed in Arkansas;

19 (iv) Insurance companies licensed in Arkansas;

20 (v) Health maintenance organizations licensed in Arkansas;

21 (vi) Unions; or

22 (vii) Consultants who only provide advice as to the
 23 selection or performance of a pharmacy benefits manager.

24 (12) "Single source drug" means a drug that is not a multi source
 25 drug;

26 (13)(A) "Third parties" means any person, business, or other entity
 27 other than a pharmacy benefits manager.

28 (B) "Third parties" does not include:

29 (i) A person, business, or other entity that owns or holds
 30 a controlling interest in the pharmacy benefits manager; or

31 (ii) A person, business, or other entity that shares
 32 common ownership or controlling interest with the pharmacy benefits manager;
 33 and

34 (14) "Usual and customary price" means the price that a pharmacist or
 35 pharmacy would have charged cash-paying patients, excluding patients where
 36 reimbursement rates are set by contract, for the same services on the same

1 date.

2

3 17-92-1104. Certificate of authority.

4 (a)(1) No person or organization shall establish, operate, or do
5 business in Arkansas as a pharmacy benefits manager in Arkansas without
6 obtaining a certificate of authority from the Arkansas State Board of
7 Pharmacy in accordance with this subchapter and all applicable federal and
8 state laws.

9 (2)(A) A pharmacy benefits manager doing business in Arkansas
10 shall obtain a certificate of authority from the board within one hundred
11 twenty (120) days of the effective date of this subchapter and every two (2)
12 years thereafter.

13 (B) The certificate of authority shall expire on December
14 31 in the year following the year the certificate of authority was first
15 issued, and then may be renewed for successive two-year periods.

16 (b)(1) Any organization or person may apply to the board to obtain a
17 certificate of authority to establish and operate a pharmacy benefits manager
18 under this subchapter.

19 (2) A nonrefundable application fee of three hundred dollars
20 (\$300), payable to the board, shall accompany each application for a
21 certificate of authority and each application for renewal of a certificate of
22 authority.

23 (c) The board shall not issue a certificate of authority to any
24 pharmacy benefits manager until the board is satisfied that the pharmacy
25 benefits manager:

26 (1) Holds a current license issued by the commissioner to do
27 business in Arkansas as a pharmacy benefits manager;

28 (2) Is ready and able to arrange for pharmacist's services in
29 Arkansas;

30 (3) Meets the requirements set forth in this subchapter and in
31 rules adopted under this subchapter; and

32 (4) Is in compliance with all applicable state and federal laws
33 and regulations.

34 (d) The board may suspend or revoke any certificate of authority
35 issued to a pharmacy benefits manager under this subchapter, deny an
36 application for a certificate of authority to an applicant, or deny an

1 application for renewal of a certificate of authority if it finds that:

2 (1) The pharmacy benefits manager is operating materially in
 3 contravention of:

4 (A) Its application or other information submitted as a
 5 part of its application for a certificate of authority or renewal of its
 6 certificate of authority; or

7 (B) Any condition imposed by the board with regard to the
 8 issuance or renewal of its certificate of authority;

9 (2) The pharmacy benefits manager does not arrange for
 10 pharmacist's services;

11 (3) The pharmacy benefits manager has failed to continuously
 12 meet the requirements for issuance of a certificate of authority as set forth
 13 in this subchapter, or any rules adopted under this subchapter;

14 (4) The pharmacy benefits manager has otherwise failed to
 15 substantially comply with this subchapter or any rules adopted under this
 16 subchapter;

17 (5) The continued operation of the pharmacy benefits manager may
 18 be hazardous to patients; or

19 (6) The pharmacy benefits manager has failed to substantially
 20 comply with any applicable state or federal law or regulation.

21 (e)(1) When the certificate of authority of a pharmacy benefits
 22 manager is revoked, the manager shall:

23 (A) Proceed, immediately following the effective date of
 24 the order of revocation, to wind up its affairs; and

25 (B) Conduct no further business except as may be essential
 26 to the orderly conclusion of its affairs.

27 (2) The board may permit any further operation of the pharmacy
 28 benefits manager as the board may find to be in the best interest of patients
 29 to the end that patients will have the greatest practical opportunity to
 30 obtain pharmacist's services.

31
 32 17-92-1105. License to do business.

33 (a)(1) No person or organization shall establish or operate a pharmacy
 34 benefits manager in Arkansas without first obtaining a license from the
 35 commissioner in accordance with this subchapter and all applicable federal
 36 and state laws.

1 (2) A pharmacy benefits manager doing business in Arkansas shall
2 obtain a license from the commissioner within sixty (60) days after the
3 effective date of this subchapter and each year thereafter.

4 (b)(1) An application for a license to operate in Arkansas as a
5 pharmacy benefits manager shall be in a form prescribed by the commissioner,
6 and shall be verified by an officer or authorized representative of the
7 pharmacy benefits manager.

8 (2) The application shall include at least the following:

9 (A) All organizational documents including but not limited
10 to, articles of incorporation, bylaws, and other similar documents and any
11 amendments;

12 (B) The names, addresses, and titles of individuals
13 responsible for the business and services provided, including, all claims
14 processing services and other prescription drug or device services;

15 (C) The names, addresses, titles, and qualifications of
16 the members and officers of the board of directors, board of trustees, or
17 other governing body or committee, or the partners or owners in case of a
18 partnership, other entity, or association;

19 (D) A detailed description of the claims processing
20 services and other prescription drug or device services provided or to be
21 provided;

22 (E) The name and address of the agent for service of
23 process in Arkansas;

24 (F) Financial statements for the current and the preceding
25 year, showing the assets, liabilities, direct or indirect income, and any
26 other sources of financial support sufficient as deemed by the commissioner
27 to show financial stability and viability to meet its full obligations to
28 pharmacies and pharmacists;

29 (G) A bond in an amount determined by the commissioner by
30 rule to ensure that funds received by the pharmacy benefits manager for
31 pharmacist's services are, in fact, paid to appropriate pharmacies and
32 pharmacists;

33 (H) All incentive arrangements or programs such as
34 rebates, discounts, disbursements, or any other similar financial program or
35 arrangement relating to income or consideration received or negotiated,
36 directly or indirectly, with any pharmaceutical company, that relates to

1 other prescription drug or device services, including, but not limited to:

2 (i) Information on the formula or other method for
3 calculation and amount of the incentive arrangements, rebates, or other
4 disbursements;

5 (ii) The identity of the associated drug or device;
6 and

7 (iii) The dates and amounts of the disbursements;
8 and

9 (I) Other and further information as the commissioner may
10 require.

11 (c) The commissioner shall not issue an annual pharmacy benefits
12 manager license to do business in Arkansas to any pharmacy benefits manager
13 until the commissioner is satisfied that the pharmacy benefits manager has:

14 (1) Paid all fees, taxes, and charges required by law;

15 (2) Filed a financial statement or statements and any reports,
16 certificates, or other documents the commissioner considers necessary to
17 secure a full and accurate knowledge of the pharmacy benefits manager's
18 affairs and financial condition;

19 (3)(A) Established its solvency; and

20 (B) Satisfied the commissioner that the pharmacy benefits
21 manager's financial condition, method of operation, and manner of doing
22 business make it possible for the pharmacy benefits manager to meet its
23 obligations to pharmacies and pharmacists;

24 (4) Otherwise complied with all the requirements of law; and

25 (5) Obtained a bond in an amount determined by the commissioner
26 to ensure that funds received by the pharmacy benefits manager for
27 pharmacist's services are, in fact, paid to appropriate pharmacies and
28 pharmacists.

29 (d)(1) The annual pharmacy benefits manager's license shall be in
30 addition to the certificate of authority issued by the Arkansas State Board
31 of Pharmacy.

32 (2) A nonrefundable license application fee of five hundred
33 dollars (\$500) shall accompany each application for a license to transact
34 business in Arkansas.

35 (3) The fee shall be collected by the commissioner and paid
36 directly into a special fund whose funds are not deposited in the State

1 Treasury that shall provide expenses for the regulation, supervision, and
 2 examination of all entities subject to regulation under this subchapter.

3 (e) The pharmacy benefits manager license shall be signed by the
 4 commissioner or an authorized agent of the commissioner and shall expire one
 5 (1) year after the date the license becomes effective.

6 (f)(1) A pharmacy benefits manager transacting business in Arkansas
 7 shall obtain an annual renewal of its license from the commissioner.

8 (2) The commissioner may refuse to renew the license of any
 9 pharmacy benefits manager or may renew the license, subject to any
 10 restrictions considered appropriate by the commissioner, if the commissioner
 11 finds that the pharmacy benefits manager has not satisfied all the conditions
 12 stated in this subchapter.

13 (3)(A) Before denying renewal of a license, the commissioner
 14 shall provide the pharmacy benefits manager:

15 (i) At least ten (10) days' advance notice of the
 16 denial; and

17 (ii) An opportunity to appear at a formal or
 18 informal hearing.

19 (B) The commissioner and the pharmacy benefits manager may
 20 jointly waive the required notice.

21
 22 17-92-1106. Rules.

23 (a) The Arkansas State Board of Pharmacy may adopt rules not
 24 inconsistent with this subchapter regulating pharmacy benefits managers with
 25 regard to professional, public health, and public safety issues.

26 (b) The Insurance Commissioner may adopt rules not inconsistent with
 27 this subchapter regulating pharmacy benefits managers with regard to business
 28 and financial issues.

29 (c) Rules adopted under this subchapter may set penalties including,
 30 but not limited to, monetary fines, for violations of this subchapter and
 31 rules adopted under this subchapter.

32
 33 17-92-1107. Annual statement.

34 (a)(1) A pharmacy benefits manager doing business in Arkansas shall
 35 file a statement with the commissioner annually by March 1.

36 (2) The statement shall be verified by at least two (2)

1 principal officers of the pharmacy benefits manager and shall cover the
 2 preceding calendar year.

3 (b) The statement shall be on forms prescribed by the commissioner and
 4 shall include:

5 (1) A financial statement of the organization, including its
 6 balance sheet and income statement for the preceding year;

7 (2) The number and dollar value of claims for pharmacist's
 8 services processed by the pharmacy benefits manager during the preceding year
 9 with respect to patients who are residents of Arkansas; and

10 (3) Any other information relating to the operations of the
 11 pharmacy benefits manager required by the commissioner.

12 (c) If a pharmacy benefits manager is audited annually by an
 13 independent certified public accountant, a copy of each certified audit
 14 report shall be promptly filed with the commissioner.

15 (d)(1) The commissioner may extend the time prescribed for any
 16 pharmacy benefits manager for filing annual statements or other reports or
 17 exhibits for good cause shown.

18 (2) However, the commissioner may not extend the time for filing
 19 annual statements beyond sixty (60) days after the time prescribed in this
 20 section.

21 (3) Until the annual statement is filed, the commissioner may
 22 revoke or suspend the license of a pharmacy benefits manager that fails to
 23 file its annual statement within the time prescribed by this section.

24
 25 17-92-1108. Financial examination.

26 (a)(1) The commissioner shall regularly conduct financial examinations
 27 of all pharmacy benefits managers doing business in Arkansas pursuant to a
 28 schedule and in a manner established by rule.

29 (2) The examination shall verify:

30 (A) The financial ability of the pharmacy benefits manager
 31 to meet its full obligations to pharmacies and pharmacists;

32 (B) Information submitted to the commissioner as a part of
 33 an application for a license or renewal of a license; and

34 (C) Compliance with § 17-92-1110(e) and § 17-92-1113(e).

35 (b) In lieu of, or in addition to, making the financial examination of
 36 a pharmacy benefits manager, the commissioner may accept the report of a

1 financial examination of the pharmacy benefits manager under the laws of
 2 another state certified by its insurance commissioner, similar regulatory
 3 agency, or state health agency, to the extent that the report of financial
 4 examination covers the minimum requirements specified in subsection (a) of
 5 this section.

6 (c)(1) The commissioner shall coordinate financial examinations of
 7 pharmacy benefits managers to ensure an appropriate level of regulatory
 8 oversight and to avoid any undue duplication of effort or regulation.

9 (2) The pharmacy benefits manager being examined shall pay the
 10 cost of the examination.

11 (3) The cost of the examination shall be deposited in a special
 12 fund, whose funds are not deposited in the State Treasury that shall provide
 13 all expenses for the regulation, supervision, and examination of all entities
 14 subject to regulation under this subchapter.

15
 16 17-92-1109. Assessment.

17 (a) Except as provided in § 17-92-1108(c)(3), the expense of
 18 administering this subchapter incurred by the commissioner shall be assessed
 19 annually by the commissioner against all pharmacy benefits managers operating
 20 in Arkansas.

21 (b) The commissioner shall assess each pharmacy benefits manager
 22 annually for its share of the estimated commissioner's expenses with regard
 23 to this subchapter in proportion to the business done in Arkansas, as
 24 determined by the commissioner in the commissioner's reasonable discretion.

25 (c)(1) The commissioner shall give each pharmacy benefits manager
 26 notice of the assessment, which shall be paid to the commissioner before
 27 March 2 of each year.

28 (2) A pharmacy benefits manager that fails to pay the assessment
 29 before March 2 of each year shall be subject to a penalty imposed by the
 30 commissioner.

31 (3) The penalty shall be ten (10%) percent of the assessment
 32 plus interest for the period between the due date and the date of full
 33 payment.

34 (4) If a payment is made in an amount later found to be in
 35 error, the commissioner shall:

36 (A) If an additional amount is due:

1 (i) Notify the pharmacy benefits manager of the
 2 additional amount due; and

3 (ii) Order the pharmacy benefits manager to pay the
 4 additional amount within fourteen (14) days of the date of the notice; or

5 (B) If an overpayment is made, order a refund to the pharmacy
 6 benefits manager.

7 (d)(1) If an assessment made under this subchapter is not paid to the
 8 commissioner by the prescribed date, the amount of the assessment, plus any
 9 penalty, may be recovered from the defaulting pharmacy benefits manager on
 10 motion of the commissioner made in the name, and for the use of, the State of
 11 Arkansas in the Circuit Court of Pulaski County, after ten (10) days' notice
 12 to the pharmacy benefits manager.

13 (2) The license of any defaulting pharmacy benefits manager to
 14 transact business in Arkansas may be revoked or suspended by the commissioner
 15 until the pharmacy benefits manager has paid the assessment.

16 (e) All fees assessed under this subchapter and paid to the
 17 commissioner shall be deposited in a special fund, whose funds are not
 18 deposited in the State Treasury that shall provide all expenses for the
 19 regulation, supervision, and examination by the commissioner of all entities
 20 subject to regulation under this subchapter.

21 (f) If a pharmacy benefits manager becomes insolvent or ceases to do
 22 business in Arkansas in any assessable or license year, the pharmacy benefits
 23 manager shall remain liable for the payment of the assessment for the period
 24 in which it operated as a pharmacy benefits manager in Arkansas.

25
 26 17-92-1110. Pharmacy benefits manager contracts.

27 (a)(1) A pharmacy benefits manager that contracts with a pharmacy or
 28 pharmacist to provide pharmacist's services in Arkansas shall first inform
 29 the pharmacy or pharmacist in writing of the number of, and other relevant
 30 information concerning, patients to be served by the pharmacy or pharmacist
 31 under the contract.

32 (2) There shall be a separate contract with each pharmacy or
 33 pharmacist for each of the pharmacy benefits manager's provider networks.

34 (3) Contracts providing for indemnity of the pharmacy or
 35 pharmacist shall be separate from contracts providing for cash discounts.

36 (4) A pharmacy benefits manager shall not require that a

1 pharmacy or pharmacist participate in one contract in order to participate in
2 another contract.

3 (b) Each pharmacy benefits manager shall provide contracts to the
4 pharmacies and pharmacists that are written in plain English, using terms
5 that will be generally understood by pharmacists.

6 (c) All contracts between a pharmacy benefits manager and a pharmacy
7 or pharmacist shall provide specific time limits for the pharmacy benefits
8 manager to pay the pharmacy, pharmacist, or both, for pharmacist's services
9 rendered.

10 (d)(1) No pharmacy benefits manager contract may mandate that any
11 pharmacy or pharmacist change a patient's maintenance drug unless the
12 prescribing practitioner so orders.

13 (2) No pharmacy benefits manager contract may mandate basic
14 record keeping by any pharmacy or pharmacist that is more stringent than
15 required by state or federal laws or regulations.

16 (e)(1) In handling moneys received by the pharmacy benefits manager
17 for pharmacist's services, the pharmacy benefits manager acts as a fiduciary
18 of the pharmacy, pharmacist, or both, who provided the pharmacist's services.

19 (2) A pharmacy benefits manager shall distribute all moneys the
20 pharmacy benefits manager receives for pharmacist's services to the
21 pharmacies and pharmacists who provided the pharmacist's services and shall
22 do so within a time established by the commissioner.

23 (f)(1) A pharmacy benefits manager shall file its contract forms for
24 contracts with pharmacies or pharmacists to provide pharmacist's services in
25 Arkansas with the commissioner thirty (30) days before the first use of the
26 contract forms in Arkansas.

27 (2)(A) The contract forms are approved unless the commissioner
28 disapproves the contract forms within thirty (30) days after filing with the
29 commissioner.

30 (B) Disapproval shall be in writing, stating the reasons
31 for the disapproval and a copy shall be delivered to the pharmacy benefits
32 manager.

33 (C) The commissioner shall develop formal criteria for the
34 approval and disapproval of pharmacy benefits manager contract forms.

35 (g)(1) A pharmacy benefits manager that initiates an audit of a
36 pharmacy or pharmacist under the contract shall limit the audit to methods

1 and procedures that are recognized as fair and equitable for both the
 2 pharmacy benefits manager and the pharmacy, pharmacist, or both.

3 (2) Extrapolation calculations in an audit are prohibited.

4 (3) A pharmacy benefits manager may not recoup any moneys due
 5 from an audit by setoff from future remittances until the results of the
 6 audit are finalized.

7 (h) Before terminating a pharmacy or pharmacist from a pharmacy
 8 benefits manager’s provider network, the pharmacy benefits manager shall give
 9 the pharmacy or pharmacist a written explanation of the reason for the
 10 termination thirty (30) days before the actual termination unless the
 11 termination is taken in reaction to:

12 (1) Loss of license;

13 (2) Loss of professional liability insurance; or

14 (3) Conviction of fraud or misrepresentation.

15 (i)(1) No pharmacy or pharmacist may be held responsible for acts or
 16 omissions of a pharmacy benefits manager.

17 (2) No pharmacy benefits manager may be held responsible for the
 18 acts or omissions of a pharmacy or pharmacist.

19
 20 17-92-1111. Enforcement.

21 (a)(1) Enforcement of this subchapter shall be the responsibility of
 22 the board and the commissioner.

23 (2) The board, the commissioner, or both, shall take action or
 24 impose appropriate penalties to bring a noncomplying pharmacy benefits
 25 manager into full compliance with this subchapter or shall terminate the
 26 pharmacy benefits manager’s certificate of authority or license.

27 (b)(1) The board and the commissioner shall each adopt procedures for
 28 formal investigation of complaints concerning the failure of a pharmacy
 29 benefits manager to comply with this subchapter.

30 (2)(A) The commissioner may refer a complaint received under
 31 this subchapter to the board if the complaint involves a professional or
 32 patient health or safety issue.

33 (B) The board may refer a complaint received under this
 34 subchapter to the commissioner if the complaint involves a business or
 35 financial issue.

36 (3)(A) If the board or the commissioner has reason to believe

1 that there may have been a violation of this subchapter, the board or
 2 commissioner shall issue and serve upon the pharmacy benefits manager a
 3 statement of the charges and a notice of a hearing.

4 (B) The hearing shall be held at a time and place fixed in
 5 the notice, and not be less than thirty (30) days after the notice is served.

6 (C) At the hearing, the pharmacy benefits manager shall
 7 have an opportunity to be heard and to show cause why the board or the
 8 commissioner should not:

9 (i) Issue a cease and desist order against the
 10 pharmacy benefits manager; or

11 (ii) Take any other necessary or appropriate action,
 12 including, but not limited to, termination of the pharmacy benefits manager's
 13 certificate of authority or license.

14 (c)(1) The board may conduct an investigation concerning the quality
 15 of services of any pharmacy benefits manager, pharmacy, or pharmacist with
 16 whom the pharmacy benefits manager has contracts, as the board deems
 17 necessary for the protection of the interests of the residents of Arkansas.

18 (2) In addition to applying penalties and remedies under this
 19 subchapter for a pharmacy benefits manager's violation of this subchapter,
 20 the board may also apply penalties and remedies under any other subchapter of
 21 Arkansas Code Title 17, Chapter 92 for violation of that chapter.

22
 23 17-92-1112. Medication Reimbursement Costs.

24 (a) Pharmacy benefits managers shall use a current nationally
 25 recognized benchmark to base reimbursements for medications and products
 26 dispensed by pharmacies or pharmacists with whom the pharmacy benefits
 27 manager contracts as follows:

28 (1) For brand single source drugs and brand multi source drugs,
 29 either the Average Wholesale Price as listed in First Data Bank, Hearst
 30 Publications, or Facts & Comparisons, formerly Medispan, shall be used as an
 31 index;

32 (2) For generic multi source drugs, maximum allowable costs
 33 shall be established by referencing the Baseline Price as listed in either
 34 First Data Bank or Facts & Comparisons;

35 (3) Only products that are in compliance with pharmacy laws as
 36 equivalent and generically interchangeable with a United States Food and Drug

1 Administration Orange Book rating of "A" may be reimbursed from a maximum
2 allowable cost price methodology;

3 (4) If a generic multi source drug product has no baseline
4 price, then it shall be treated as a brand single source drug for the purpose
5 of valuing reimbursement.

6 (b) If the publications specified in subsection (a) of this section
7 cease to be nationally recognized benchmarks used to base reimbursement for
8 medications and products dispensed by pharmacies and pharmacists, other
9 current nationally recognized benchmarks, as are then current and in effect,
10 may be utilized so long as the benchmark is established and published by a
11 person, business, or other entity with which no pharmacy benefits manager has
12 a financial or business interest or connection.

13
14 17-92-1113. Prohibited practices.

15 (a) No pharmacy benefits manager, or representative of a pharmacy
16 benefits manager, may cause or knowingly permit the use of any advertisement,
17 promotion, solicitation, proposal or offer that is untrue, deceptive or
18 misleading.

19 (b) No pharmacy benefits manager may discriminate on the basis of
20 race, creed, color, sex, or religion in the selection of pharmacies or
21 pharmacists with which the pharmacy benefits manager contracts.

22 (c) No pharmacy benefits manager may unreasonably discriminate against
23 or between pharmacies or pharmacists.

24 (d)(1) A pharmacy benefits manager shall be entitled to access a
25 pharmacy's or pharmacist's usual and customary price only for comparison to
26 specific claims for payment made by the pharmacy or pharmacist to the
27 pharmacy benefits manager.

28 (2) Usual and customary pricing is confidential and any other
29 use or disclosure by the pharmacy benefits manager is prohibited.

30 (e)(1) No pharmacy benefits manager may, directly or indirectly,
31 overtly or covertly, in cash or in kind, receive or accept any rebate,
32 kickback, or any special payment, favor, or advantage of any valuable
33 consideration or inducement for influencing or switching a patient's drug
34 product unless the rebate, kickback, payment, favor, valuable consideration,
35 or inducement is specified in a written contract that has been filed with the
36 commissioner.

1 (2) Arkansas Code § 25-19-105(b)(9)(A) shall not apply to
2 contracts filed with the commissioner under this subsection (e).

3 (f)(1) Claims for pharmacist's services paid by a pharmacy benefits
4 manager may not be retroactively denied or adjusted after adjudication of the
5 claims, unless:

6 (A) The original claim was submitted fraudulently;

7 (B) The original claim payment was incorrect because the
8 pharmacy or pharmacist had already been paid for the pharmacist's services;
9 or

10 (C) The pharmacist's services were not, in fact, rendered
11 by the pharmacy or pharmacist;

12 (2) No acknowledgement of eligibility may be retroactively
13 reversed.

14 (g) No pharmacy benefits manager may terminate a contract with a
15 pharmacy or pharmacist, or terminate, suspend or otherwise limit the
16 participation of a pharmacy or pharmacist in a pharmacy benefits manager's
17 provider network, because:

18 (1) The pharmacy or pharmacist expresses disagreement with the
19 pharmacy benefits manager's decision to deny or limit benefits to a patient;

20 (2) The pharmacist discusses with a patient any aspect of the
21 patient's medical condition or treatment alternatives;

22 (3) The pharmacist makes personal recommendations regarding
23 selecting a pharmacy benefits manager based on the pharmacist's personal
24 knowledge of the health needs of the patient;

25 (4) The pharmacy or pharmacist protests or expresses disagreement
26 with a decision, policy, or practice of the pharmacy benefits manager;

27 (5) The pharmacy or pharmacist has, in good faith, communicated
28 with or advocated on behalf of, any patient related to the needs of the
29 patient regarding the method by which the pharmacy or pharmacist is
30 compensated for services provided under the contract with the pharmacy
31 benefits manager;

32 (6) The pharmacy or pharmacist complains to the board or
33 commissioner that the pharmacy benefits manager has failed to comply with
34 this subchapter; or

35 (7) The pharmacy or pharmacist asserts rights under the contract
36 with the pharmacy benefits manager.

1 (h) Termination of a contract between a pharmacy benefits manager and
2 a pharmacy or pharmacist, or termination of a pharmacy or pharmacist from a
3 pharmacy benefits manager’s provider network shall not release the pharmacy
4 benefits manager from the obligation to make any payment due to the pharmacy
5 or pharmacist for pharmacist’s services rendered.

6 (i) No pharmacy benefits manager may intervene in the delivery or
7 transmission of prescriptions from the prescriber to the pharmacist or
8 pharmacy for the purpose of:

9 (1) Influencing the prescriber’s choice of therapy;

10 (2) Influencing the patient’s choice of pharmacist or pharmacy;

11 or

12 (3) Altering the prescription information, including but not
13 limited to, switching the prescribed drug without the express written
14 authorization of the prescriber.

15 (j) No pharmacy benefits manager may engage in or interfere with the
16 practice of medicine or intervene in the practice of medicine between
17 prescribers and their patients.

18 (k) No pharmacy benefits manager may engage in any activity that
19 violates any requirement of Arkansas Code Title 17, Chapter 92.

20
21 17-92-1114. No impairment of existing contracts.

22 To avoid impairment of existing contracts, this subchapter shall apply
23 only to contracts entered into or renewed after the effective date of this
24 subchapter.

25
26 17-92-1115. Supplemental nature.

27 This subchapter is supplemental to all other laws and repeals only
28 those laws or parts of laws in direct conflict with it.