

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
4

As Engrossed: S3/5/03
A Bill

SENATE BILL 313

5 By: Senators Malone, *J. Bookout, Capps, Higginbothom, Horn, G. Jeffress, J. Jeffress, Miller, Trusty*
6
7

8 **For An Act To Be Entitled**

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

15 **Subtitle**

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

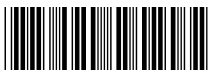
28 17-92-1102. Purpose and intent.

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)(A) "Controlling interest" means that one (1) person, business, or
23 other entity directly or indirectly, owns, controls, holds with the power to
24 vote, or holds proxies representing fifty percent (50%) or more of the voting
25 interests of another person, business, or other entity.

26 (B) "Common controlling interest" means that a controlling
27 interest in two persons, businesses, or other entities is held by the same
28 person, business, or other entity;

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

32 (7) "Multi source drug" means a drug that is stocked and available
33 from three (3) or more suppliers;

34 (8) "Other prescription drug or device services" means services other
35 than claims processing services, provided directly or indirectly by a
36 pharmacy benefit manager, whether in connection with or separate from claims

1 processing services, including, but not limited to:

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

4 (B) Disbursing or distributing rebates;

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

7 (D) Negotiating or entering into contractual arrangements with
8 pharmacists, pharmacies, or both;

9 (E) Developing formularies;

10 (F) Designing prescription benefit programs; or

11 (G) Advertising or promoting claims processing services or other
12 prescription drug or device services;

13 (9) "Pharmacist" means an individual licensed as a pharmacist by the
14 board;

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

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

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

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

23 (i) Health care facilities licensed in Arkansas;

24 (ii) Healthcare professionals licensed in Arkansas;

25 (iii) Pharmacies licensed in Arkansas;

26 (iv) Insurance companies licensed in Arkansas;

27 (v) Health maintenance organizations licensed in Arkansas;

28 (vi) Unions; or

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

31 (13) "Single source drug" means a drug that is not a multi source
32 drug;

33 (14)(A) "Third parties" means any person, business, or other entity
34 other than a pharmacy benefits manager.

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

36 (i) A person, business, or other entity that holds a

1 controlling interest in the pharmacy benefits manager; or

2 (ii) A person, business, or other entity that shares
3 common controlling interest with the pharmacy benefits manager; and

4 (15) "Usual and customary price" means the price that a pharmacist or
5 pharmacy would have charged cash-paying patients, excluding patients where
6 reimbursement rates are set by contract, for the same services on the same
7 date.

8
9 17-92-1104. Certificate of authority.

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

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

19 (B) The certificate of authority shall expire on December
20 31 in the year following the year the certificate of authority was first
21 issued, and then may be renewed for successive two-year periods.

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

25 (2) A nonrefundable application fee of three hundred dollars
26 (\$300), payable to the board, shall accompany each application for a
27 certificate of authority and each application for renewal of a certificate of
28 authority.

29 (c) The board shall not issue a certificate of authority to any
30 pharmacy benefits manager until the board is satisfied that the pharmacy
31 benefits manager:

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

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

36 (3) Meets the requirements set forth in this subchapter and in

1 rules adopted under this subchapter; and

2 (4) Is in compliance with all applicable state and federal laws
3 and regulations.

4 (d) The board may suspend or revoke any certificate of authority
5 issued to a pharmacy benefits manager under this subchapter, deny an
6 application for a certificate of authority to an applicant, or deny an
7 application for renewal of a certificate of authority if it finds that:

8 (1) The pharmacy benefits manager is operating materially in
9 contravention of:

10 (A) Its application or other information submitted as a
11 part of its application for a certificate of authority or renewal of its
12 certificate of authority; or

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

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

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

20 (4) The pharmacy benefits manager has otherwise failed to
21 substantially comply with this subchapter or any rules adopted under this
22 subchapter;

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

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

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

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

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

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

1
2 17-92-1105. License to do business.

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

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

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

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

15 (A) All organizational documents including but not limited
16 to, articles of incorporation, bylaws, and other similar documents and any
17 amendments;

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

21 (C) The names, addresses, titles, and qualifications of
22 the members and officers of the board of directors, board of trustees, or
23 other governing body or committee, or the partners or owners in case of a
24 partnership, other entity, or association;

25 (D) A detailed description of the claims processing
26 services and other prescription drug or device services provided or to be
27 provided;

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

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

35 (G) A bond in an amount determined by the commissioner by
36 rule to ensure that funds received by the pharmacy benefits manager for

1 pharmacist's services are, in fact, paid to appropriate pharmacies and
2 pharmacists.

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

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

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

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

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

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

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

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

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

27 (3) The fee shall be collected by the commissioner and paid
28 directly into a special fund whose funds are not deposited in the State
29 Treasury that shall provide expenses for the regulation, supervision, and
30 examination of all entities subject to regulation under this subchapter.

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

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

36 (2) The commissioner may refuse to renew the license of any

1 pharmacy benefits manager or may renew the license, subject to any
2 restrictions considered appropriate by the commissioner, if the commissioner
3 finds that the pharmacy benefits manager has not satisfied all the conditions
4 stated in this subchapter.

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

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

9 (ii) An opportunity to appear at a formal or
10 informal hearing.

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

13
14 17-92-1106. Rules.

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

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

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

24
25 17-92-1107. Annual statement.

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

28 (2) The statement shall be verified by at least two (2)
29 principal officers of the pharmacy benefits manager and shall cover the
30 preceding calendar year.

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

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

35 (2) The number and dollar value of claims for pharmacist's
36 services processed by the pharmacy benefits manager during the preceding year

1 with respect to patients who are residents of Arkansas; and

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

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

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

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

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

16
17 17-92-1108. Financial examination.

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

21 (2) The examination shall verify:

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

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

26 (C) Compliance with § 17-92-1110(e).

27 (b) In lieu of, or in addition to, making the financial examination of
28 a pharmacy benefits manager, the commissioner may accept the report of a
29 financial examination of the pharmacy benefits manager under the laws of
30 another state certified by its insurance commissioner, similar regulatory
31 agency, or state health agency, to the extent that the report of financial
32 examination covers the minimum requirements specified in subsection (a) of
33 this section.

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

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

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

7
8 17-92-1109. Assessment.

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

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

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

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

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

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

28 (A) If an additional amount is due:

29 (i) Notify the pharmacy benefits manager of the
30 additional amount due; and

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

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

35 (d)(1) If an assessment made under this subchapter is not paid to the
36 commissioner by the prescribed date, the amount of the assessment, plus any

1 penalty, may be recovered from the defaulting pharmacy benefits manager on
2 motion of the commissioner made in the name, and for the use of, the State of
3 Arkansas in the Circuit Court of Pulaski County, after ten (10) days' notice
4 to the pharmacy benefits manager.

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

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

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

17
18 17-92-1110. Pharmacy benefits manager contracts.

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

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

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

28 (4) A pharmacy benefits manager shall not require that a
29 pharmacy or pharmacist participate in one contract in order to participate in
30 another contract.

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

34 (c) All contracts between a pharmacy benefits manager and a pharmacy
35 or pharmacist shall provide specific time limits for the pharmacy benefits
36 manager to pay the pharmacy, pharmacist, or both, for pharmacist's services

1 rendered.

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

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

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

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

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

19 (2)(A) The contract forms are approved unless the commissioner
20 disapproves the contract forms within thirty (30) days after filing with the
21 commissioner.

22 (B) Disapproval shall be in writing, stating the reasons
23 for the disapproval and a copy shall be delivered to the pharmacy benefits
24 manager.

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

27 (g)(1) A pharmacy benefits manager that initiates an audit of a
28 pharmacy or pharmacist under the contract shall limit the audit to methods
29 and procedures that are recognized as fair and equitable for both the
30 pharmacy benefits manager and the pharmacy, pharmacist, or both.

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

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

35 (h) Before terminating a pharmacy or pharmacist from a pharmacy
36 benefits manager's provider network, the pharmacy benefits manager shall give

1 the pharmacy or pharmacist a written explanation of the reason for the
2 termination thirty (30) days before the actual termination unless the
3 termination is taken in reaction to:

4 (1) Loss of license;

5 (2) Loss of professional liability insurance; or

6 (3) Conviction of fraud or misrepresentation.

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

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

11
12 17-92-1111. Enforcement.

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

15 (2) The board, the commissioner, or both, shall take action or
16 impose appropriate penalties to bring a noncomplying pharmacy benefits
17 manager into full compliance with this subchapter or shall terminate the
18 pharmacy benefits manager's certificate of authority or license.

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

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

25 (B) The board may refer a complaint received under this
26 subchapter to the commissioner if the complaint involves a business or
27 financial issue.

28 (3)(A) If the board or the commissioner has reason to believe
29 that there may have been a violation of this subchapter, the board or
30 commissioner shall issue and serve upon the pharmacy benefits manager a
31 statement of the charges and a notice of a hearing.

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

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

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

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

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

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

14
15 17-92-1112. Medication Reimbursement Costs.

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

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

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

27 (3) Only products that are in compliance with pharmacy laws as
28 equivalent and generically interchangeable with a United States Food and Drug
29 Administration Orange Book rating of "A" may be reimbursed from a maximum
30 allowable cost price methodology;

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

34 (b) If the publications specified in subsection (a) of this section
35 cease to be nationally recognized benchmarks used to base reimbursement for
36 medications and products dispensed by pharmacies and pharmacists, other

1 current nationally recognized benchmarks, as are then current and in effect,
2 may be utilized so long as the benchmark is established and published by a
3 person, business, or other entity with which no pharmacy benefits manager has
4 a financial or business interest or connection.

5
6 17-92-1113. Prohibited practices.

7 (a) No pharmacy benefits manager, or representative of a pharmacy
8 benefits manager, may cause or knowingly permit the use of any advertisement,
9 promotion, solicitation, proposal or offer that is untrue, deceptive or
10 misleading.

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

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

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

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

22 (e)(1) Claims for pharmacist's services paid by a pharmacy benefits
23 manager may not be retroactively denied or adjusted after adjudication of the
24 claims, unless:

25 (A) The original claim was submitted fraudulently;

26 (B) The original claim payment was incorrect because the
27 pharmacy or pharmacist had already been paid for the pharmacist's services;
28 or

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

31 (2) No acknowledgement of eligibility may be retroactively
32 reversed.

33 (f) No pharmacy benefits manager may terminate a contract with a
34 pharmacy or pharmacist, or terminate, suspend or otherwise limit the
35 participation of a pharmacy or pharmacist in a pharmacy benefits manager's
36 provider network, because:

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

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

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

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

10 (5) The pharmacy or pharmacist has, in good faith, communicated
11 with or advocated on behalf of, any patient related to the needs of the
12 patient regarding the method by which the pharmacy or pharmacist is
13 compensated for services provided under the contract with the pharmacy
14 benefits manager;

15 (6) The pharmacy or pharmacist complains to the board or
16 commissioner that the pharmacy benefits manager has failed to comply with
17 this subchapter; or

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

20 (g) Termination of a contract between a pharmacy benefits manager and
21 a pharmacy or pharmacist, or termination of a pharmacy or pharmacist from a
22 pharmacy benefits manager's provider network shall not release the pharmacy
23 benefits manager from the obligation to make any payment due to the pharmacy
24 or pharmacist for pharmacist's services rendered.

25 (h) No pharmacy benefits manager may intervene in the delivery or
26 transmission of prescriptions from the prescriber to the pharmacist or
27 pharmacy for the purpose of:

28 (1) Influencing the prescriber's choice of therapy;

29 (2) Influencing the patient's choice of pharmacist or pharmacy;

30 or

31 (3) Altering the prescription information, including but not
32 limited to, switching the prescribed drug without the express written
33 authorization of the prescriber.

34 (i) No pharmacy benefits manager may engage in or interfere with the
35 practice of medicine or intervene in the practice of medicine between
36 prescribers and their patients.

