

1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013
4

As Engrossed: S3/28/13

A Bill

SENATE BILL 1138

5 By: Senator Caldwell
6

For An Act To Be Entitled

8 AN ACT TO PROVIDE FOR THE TRANSPARENCY OF MAXIMUM
9 ALLOWABLE COST LISTS FOR PRESCRIPTION DRUGS; AND FOR
10 OTHER PURPOSES.
11

Subtitle

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14 TO REGULATE PHARMACY BENEFITS MANAGERS'
15 MAINTENANCE AND USE OF MAXIMUM ALLOWABLE
16 COST LISTS FOR PRESCRIPTION DRUGS.
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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21 SECTION 1. Arkansas Code Title 17, Chapter 92, Subchapter 5, is
22 amended to add an additional section to read as follows:

23 17-92-507. Maximum Allowable Cost Lists.

24 (a) As used in this section:

25 (1) "Maximum Allowable Cost List" means a listing of drugs used
26 by a pharmacy benefits manager setting the maximum allowable cost on which
27 reimbursement to a pharmacy or pharmacist may be based;

28 (2) "Pharmacy benefits manager" means an entity that administers
29 or manages a pharmacy benefits plan or program;

30 (3) "Pharmacy benefits plan or program" means a plan or program
31 that pays for, reimburses, covers the cost of, or otherwise provides for
32 pharmacist services to individuals who reside in or are employed in this
33 state;

34 (4) "Pharmacist" means a licensed pharmacist as defined in § 17-
35 92-101;

36 (5) "Pharmacy" means the same as in § 17-92-101; and



1 (6) "Pharmacist services" means products, goods, or services
2 provided as a part of the practice of pharmacy in Arkansas.

3 (b) Before a pharmacy benefits manager places or continues a
4 particular drug on a Maximum Allowable Cost List, the drug:

5 (1) Shall be listed as therapeutically equivalent and
6 pharmaceutically equivalent "A" or "B" rated in the United States Food and
7 Drug Administration's most recent version of the "Orange Book" or "Green
8 Book" or has an NR or NA rating by Medispan or a similar rating by a
9 nationally recognized reference;

10 (2) Shall be available for purchase by each pharmacy in the
11 state from national or regional wholesalers operating in Arkansas; and

12 (3) Shall not be obsolete.

13 (c) A pharmacy benefits manager shall:

14 (1) Provide access to its Maximum Allowable Cost List to each
15 pharmacy subject to the Maximum Allowable Cost List;

16 (2) Update its Maximum Allowable Cost List on a timely basis,
17 but in no event longer than seven (7) calendar days from a change in the
18 methodology on which the Maximum Allowable Cost List is based or in the value
19 of a variable involved in the methodology;

20 (3) Provide a process for each pharmacy subject to the Maximum
21 Allowable Cost List to receive prompt notification of an update to the
22 Maximum Allowable Cost List; and

23 (4)(A) Within three (3) business days after the applicable fill
24 date, provide a reasonable administrative appeal procedure to allow
25 pharmacies to challenge maximum allowable costs for a specific drug or drugs
26 as:

27 (i) Not meeting the requirements of this section; or

28 (ii) Being below the cost at which the pharmacy may
29 obtain the drug.

30 (B) The pharmacy benefits manager shall respond to the
31 challenge under subdivision (c)(4)(A)(i) of this section within seven (7)
32 business days after receipt of the challenge.

33 (C) If a challenge is under subdivision (c)(4)(A)(i) of
34 this section, the pharmacy benefits manager shall within seven (7) business
35 days after receipt of the challenge either:

36 (i) If the appeal is upheld:

1 (a) Make the change in the maximum allowable
2 cost;

3 (b) Permit the challenging pharmacy or
4 pharmacist to reverse and rebill the claim in question; and

5 (c) Make the change under subdivision
6 (c)(4)(C)(i)(a) of this section effective for each similarly situated
7 pharmacy as defined by the payor subject to the Maximum Allowable Cost List;
8 or

9 (ii) If the appeal is denied, provide the
10 challenging pharmacy or pharmacist the National Drug Code number from
11 national or regional wholesalers operating in Arkansas.

12 (d) This section does not apply to a Maximum Allowable Cost List
13 maintained by the Medicaid program.

14 (e) A violation of this section is a deceptive and unconscionable
15 trade practice under § 4-88-101 et seq.

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17 /s/Caldwell

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20 **APPROVED: 04/12/2013**