

1 State of Arkansas As Engrossed: H3/4/21 H3/15/21 S4/13/21

2 93rd General Assembly

A Bill

3 Regular Session, 2021

HOUSE BILL 1569

4

5 By: Representatives Lundstrum, Barker, Boyd, Bragg, Brown, C. Cooper, Evans, Furman, D. Garner,
6 Gazaway, Haak, Hawks, Lowery, Maddox, Murdock, Penzo, Pilkington, Ray, Scott, S. Smith, Watson, D.
7 Whitaker, Wing, Wooten, *C. Fite, V. Flowers, McCullough, Rye*

8 By: Senators Rapert, L. Chesterfield, Gilmore, M. Johnson, Teague, *T. Garner*

9

For An Act To Be Entitled

10

11 AN ACT TO ESTABLISH THE ARKANSAS FAIRNESS IN COST
12 SHARING ACT; AND FOR OTHER PURPOSES.

13

14

15

Subtitle

16

17 TO ESTABLISH THE ARKANSAS FAIRNESS IN
18 COST SHARING ACT.

19

20

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

21

22 SECTION 1. TEMPORARY LANGUAGE. DO NOT CODIFY. Legislative findings
23 and intent.

24 (a) The General Assembly finds that:

25 (1) Arkansans frequently rely on state-regulated commercial
26 insurers to secure access to the prescription drugs needed to protect their
27 health;

28 (2) Commercial insurance designs increasingly require a patient
29 to bear significant out-of-pocket costs for the patient's prescription drugs;

30 (3) High out-of-pocket costs on prescription drugs affect the
31 ability of patients to start new and necessary prescription drugs and to
32 adhere to their current prescription drugs regimen;

33 (4) High or unpredictable cost-sharing requirements are a main
34 driver of elevated out-of-pocket costs for patients and allow insurers to
35 capture and divert rebates, discounts, and price concessions that are
36 intended to benefit patients at the pharmacy counter;



1 (5) Insurers unfairly increase cost-sharing burdens on patients
2 by refusing to count third-party assistance toward a patient's cost-sharing
3 contributions;

4 (6) The burdens of high or unpredictable cost-sharing
5 requirements are borne disproportionately by patients with chronic or
6 debilitating medical conditions;

7 (7) It is necessary to restrict the ability of insurers and
8 their intermediaries to use unfair cost-sharing design to retain rebates,
9 discounts, and price concessions that instead should be directly passed on to
10 patients as cost savings at the point of sale of prescription drugs; and

11 (8) Patients need equitable and accessible health coverage that
12 does not impose unfair cost-sharing burdens upon them.

13 (b) It is the intent of the General Assembly to ensure that a state-
14 regulated insurer and the entities that contract with the state-regulated
15 insurer do not restrict patient access to prescription drugs by refusing to
16 count third-party cost-sharing assistance toward a patient's cost-sharing
17 obligations, a practice that is detrimental to the consumer.

18
19 SECTION 2. Arkansas Code Title 23, Chapter 79, is amended to add an
20 additional subchapter to read as follows:

21 Subchapter 21 – Arkansas Fairness in Cost Sharing Act

22
23 23-79-2101. Title.

24 This subchapter shall be known and may be cited as the "Arkansas
25 Fairness in Cost Sharing Act".

26
27 23-79-2102. Definitions.

28 As used in this subchapter:

29 (1) "Cost-sharing requirement" means a copayment, coinsurance,
30 deductible, or annual limitation on cost sharing, including without
31 limitation a limitation subject to the Patient Protection and Affordable Care
32 Act, Pub. L. No. 111-148, that is required by or on behalf of an enrollee in
33 order to receive a specific healthcare service, including a prescription
34 drug, covered by a health benefit plan;

35 (2) "Enrollee" means an individual entitled to healthcare
36 services from a healthcare insurer;

1 (3)(A) "Health benefit plan" means any individual, blanket, or
2 group plan, policy, or contract for healthcare services issued or delivered
3 by a healthcare insurer in this state.

4 (B) "Health benefit plan" does not include:

5 (i) Accident-only plans;

6 (ii) Specified disease plans;

7 (iii) Disability income plans;

8 (iv) Plans that provide only for indemnity for
9 hospital confinement;

10 (v) Long-term-care-only plans that do not include
11 pharmacy benefits;

12 (vi) Other limited-benefit health insurance policies
13 or plans;

14 (vii) Health benefit plans provided under Arkansas
15 Constitution, Article 5, § 32, the Workers' Compensation Law, § 11-9-101 et
16 seq., and the Public Employee Workers' Compensation Act, § 21-5-601 et seq.;

17 (viii) A plan that provides only dental benefits or
18 eye and vision care benefits; or

19 (ix) A program or plan authorized and funded under
20 42 U.S.C. § 1396a et seq.;

21 (4)(A) "Healthcare insurer" means an insurance company that is
22 subject to state law regulating insurance and offers health insurance
23 coverage under 42 U.S.C. § 300gg-91, as it existed on January 1, 2021, a
24 health maintenance organization, or a hospital and medical service
25 corporation.

26 (B) "Healthcare insurer" does not include an entity that
27 provides only dental benefits or eye and vision care benefits;

28 (5) "Healthcare service" means an item or service provided to an
29 individual for the purpose of preventing, alleviating, curing, or healing
30 illness, injury, or physical disability; and

31 (6) "Person" means a natural person, corporation, mutual
32 company, unincorporated association, partnership, joint venture, limited
33 liability company, trust, estate, foundation, not-for-profit corporation,
34 unincorporated organization, government, or governmental subdivision or
35 agency.

36

1 23-79-2103. Fairness in cost sharing.

2 (a)(1) When calculating an enrollee's contribution to any applicable
3 cost-sharing requirement, a healthcare insurer shall include any cost-sharing
4 amounts paid by the enrollee or on behalf of the enrollee by another person.

5 (2) The cost-sharing requirement under subdivision (a)(1) of
6 this section does not apply for cost-sharing of a prescription drug if a
7 name-brand prescription drug is prescribed and the prescribed drug:

8 (A) Is not considered to be medically necessary by the
9 prescriber; and

10 (B) Has a medically appropriate generic prescription drug
11 equivalent.

12 (b)(1) Except as provided in subdivision (b)(2) of this section, this
13 section applies to a health benefit plan that is entered into, amended,
14 extended, or renewed on or after January 1, 2022.

15 (2)(A) Benefits offered through a health benefit plan under the
16 Evidenced-Based Prescription Drug Program of the College of Pharmacy of the
17 University of Arkansas Medical Sciences shall satisfy the requirements of
18 this act beginning on and after January 1, 2024, if the Insurance
19 Commissioner reports a failure to comply with this section to the Legislative
20 Council.

21 (B)(i) Beginning on January 1, 2022, the Director of the
22 Evidenced-Based Prescription Drug Program of the College of Pharmacy of the
23 University of Arkansas Medical Sciences shall report quarterly to the
24 commissioner, Arkansas Legislative Audit, and the Legislative Council
25 concerning details of plan savings and how the process that is used benefits
26 an enrollee and the offered plan.

27 (ii) The report described in subdivision
28 (b)(2)(B)(i) of this section shall include the amount of enrollee savings,
29 plan-specific data on the amount of manufacturer rebates received, and how
30 the manufacturer rebates were applied in each plan for which the program is
31 contracted to administer a prescription drug benefit.

32 (c) The General Assembly intends for this section to regulate a
33 healthcare insurer only to the extent permissible under applicable law.

34
35 23-79-2104. Rules

36 (a) The Insurance Commissioner shall promulgate rules necessary to

1 carry out this subchapter.

2 (b) The rules promulgated under this section shall require a
3 healthcare insurer and the Director of the Evidenced-Based Prescription Drug
4 Program of the College of Pharmacy of the University of Arkansas Medical
5 Sciences to submit to the commissioner plan-specific information related to
6 savings and accountability to document how enrollees are realizing a cost
7 savings under each plan.

8
9 SECTION 3. Arkansas Code Title 23, Chapter 92, Subchapter 5, is
10 amended to add an additional section to read as follows:

11 23-92-511. Fairness in cost sharing – Definitions.

12 (a) As used in this section:

13 (1) "Cost-sharing requirement" means a copayment, coinsurance,
14 deductible, or annual limitation on cost sharing, including without
15 limitation a limitation subject to the Patient Protection and Affordable Care
16 Act, Pub. L. No. 111-148, that is required by or on behalf of an enrollee in
17 order to receive a specific healthcare service, including a prescription
18 drug, covered by a health benefit plan;

19 (2) "Enrollee" means an individual entitled to healthcare
20 services from a healthcare insurer;

21 (3)(A) "Health benefit plan" means any individual, blanket, or
22 group plan, policy, or contract for healthcare services issued or delivered
23 by a healthcare insurer in this state.

24 (B) "Health benefit plan" does not include:

25 (i) Accident-only plans;

26 (ii) Specified disease plans;

27 (iii) Disability income plans;

28 (iv) Plans that provide only for indemnity for
29 hospital confinement;

30 (v) Long-term-care-only plans that do not include
31 pharmacy benefits;

32 (vi) Other limited-benefit health insurance policies
33 or plans;

34 (vii) Health benefit plans provided under Arkansas
35 Constitution, Article 5, § 32, the Workers' Compensation Law, § 11-9-101 et
36 seq., and the Public Employee Workers' Compensation Act, § 21-5-601 et seq.;

1 (viii) A plan that provides only dental benefits or
2 eye and vision care benefits; or

3 (ix) A program or plan authorized and funded under
4 42 U.S.C. § 1396a et seq.;

5 (4)(A) "Healthcare insurer" means an insurance company that is
6 subject to state law regulating insurance and offers health insurance
7 coverage under 42 U.S.C. § 300gg-91, as it existed on January 1, 2021, a
8 health maintenance organization, or a hospital and medical service
9 corporation.

10 (B) "Healthcare insurer" does not include an entity that
11 provides only dental benefits or eye and vision care benefits;

12 (5) "Healthcare service" means an item or service provided to an
13 individual for the purpose of preventing, alleviating, curing, or healing
14 human illness, injury, or physical disability; and

15 (6) "Person" means a natural person, corporation, mutual
16 company, unincorporated association, partnership, joint venture, limited
17 liability company, trust, estate, foundation, not-for-profit corporation,
18 unincorporated organization, government, or governmental subdivision or
19 agency.

20 (b)(1) When calculating an enrollee's contribution to any applicable
21 cost-sharing requirement, a healthcare insurer shall include any cost-sharing
22 amounts paid by the enrollee or on behalf of the enrollee by another person.

23 (2) The cost-sharing requirement under subdivision (b)(1) of
24 this section does not apply for cost-sharing of a prescription drug if a
25 name-brand prescription drug is prescribed and the prescribed drug:

26 (A) Is not considered to be medically necessary by the
27 prescriber; and

28 (B) Has a medically appropriate generic prescription drug
29 equivalent. (c)(1) Except as provided in subdivision (c)(2) of this section,
30 this section applies to a health benefit plan that is entered into, amended,
31 extended, or renewed on or after January 1, 2022.

32 (2)(A) Benefits offered through a health benefit plan under the
33 Evidenced-Based Prescription Drug Program of the College of Pharmacy of the
34 University of Arkansas Medical Sciences shall satisfy the requirements of
35 this act beginning on and after January 1, 2024, if the Insurance
36 Commissioner reports a failure to comply with this section to the Legislative

1 Council.

2 (B)(i) Beginning on January 1, 2022, the Director of the
3 Evidenced-Based Prescription Drug Program of the College of Pharmacy of the
4 University of Arkansas Medical Sciences shall report quarterly to the
5 commissioner, Arkansas Legislative Audit, and the Legislative Council
6 concerning details of plan savings and how the process that is used benefits
7 an enrollee and the offered plan.

8 (ii) The report described in subdivision
9 (c)(2)(B)(i) of this section shall include the amount of enrollee savings,
10 plan-specific data on the amount of manufacturer rebates received, and how
11 the manufacturer rebates were applied in each plan for which the program is
12 contracted to administer a prescription drug benefit.

13 (d)(1) The commissioner shall promulgate rules necessary to carry out
14 this section.

15 (2) The rules promulgated under this section shall require a
16 healthcare insurer and the director to submit plan-specific information
17 related to savings and accountability to document how enrollees are realizing
18 a cost savings under each plan.

19 (e) The General Assembly intends for this section to regulate a
20 healthcare insurer only to the extent permissible under applicable law.

21
22 SECTION 4. TEMPORARY LANGUAGE. DO NOT CODIFY. Rules.

23 (a) The Insurance Commissioner shall promulgate rules necessary to
24 implement this act.

25 (b)(1) When adopting the initial rules to implement this act, the
26 final rule shall be filed with the Secretary of State for adoption under §
27 25-15-204(f):

28 (A) On or before January 1, 2022; or

29 (B) If approval under § 10-3-309 has not occurred by
30 January 1, 2022, as soon as practicable after approval under § 10-3-309.

31 (2) The commissioner shall file the proposed rule with the
32 Legislative Council under § 10-3-309(c) sufficiently in advance of January 1,
33 2022, so that the Legislative Council may consider the rule for approval
34 before January 1, 2022.

35
36 APPROVED: 4/27/21