

1 State of ArkansasAs *Engrossed: S3/12/19 S3/26/19 S4/1/19 S4/2/19 S4/4/19*

2 92nd General Assembly

# A Bill

3 Regular Session, 2019

SENATE BILL 520

4

5 By: Senators K. Hammer, Caldwell, G. Leding, Maloch, B. Sample

6 By: Representatives M. Gray, Burch, M. Davis, D. Douglas, Eaves, Evans, V. Flowers, Gazaway,

7 Hillman, Jett, Lowery, Lundstrum, Murdock, Pilkington, Vaught, D. Whitaker, *Berry*

8

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## For An Act To Be Entitled

10 *AN ACT TO CLARIFY THE STATE INSURANCE DEPARTMENT'S*  
11 *REGULATORY AND ENFORCEMENT AUTHORITY CONCERNING*  
12 *PHARMACY BENEFITS MANAGERS; TO MODIFY THE ARKANSAS*  
13 *PHARMACY BENEFITS MANAGER LICENSURE ACT; AND FOR*  
14 *OTHER PURPOSES*

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## Subtitle

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*TO CLARIFY THE STATE INSURANCE*

19

*DEPARTMENT'S REGULATORY AND ENFORCEMENT*

20

*AUTHORITY CONCERNING PHARMACY BENEFITS*

21

*MANAGERS; AND TO MODIFY THE ARKANSAS*

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*PHARMACY BENEFITS MANAGER LICENSURE ACT.*

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

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27 SECTION 1. Arkansas Code § 17-92-507(a)(1), concerning the definition  
28 of "Maximum Allowable Cost List" regarding Maximum Allowable Cost Lists as  
29 relating to pharmacists and pharmacies, is amended to read as follows:

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(1)(A) "Maximum Allowable Cost List" means a listing of drugs or

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other methodology used by a pharmacy benefits manager, directly or

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indirectly, setting the maximum allowable ~~cost on which reimbursement payment~~

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to a pharmacy or pharmacist ~~may be based for a generic drug, brand-name drug,~~

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biologic product, or other prescription drug.

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(B) "Maximum Allowable Cost List" includes without

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limitation:



1                    (i) Average acquisition cost, including national  
 2 average drug acquisition cost;  
 3                    (ii) Average manufacturer price;  
 4                    (iii) Average wholesale price;  
 5                    (iv) Brand effective rate or generic effective rate;  
 6                    (v) Discount indexing;  
 7                    (vi) Federal upper limits;  
 8                    (vii) Wholesale acquisition cost; and  
 9                    (viii) Any other term that a pharmacy benefits  
 10 manager or a healthcare insurer may use to establish reimbursement rates to a  
 11 pharmacist or pharmacy for pharmacist services;  
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13            SECTION 2. Arkansas Code § 17-92-507(a)(4), concerning the definition  
 14 of "pharmacist services" regarding services provided by pharmacists as  
 15 relating to pharmacists and pharmacies, is amended to read as follows:

16            (4) "Pharmacist services" means products, goods, ~~or~~ and  
 17 services, or any combination of products, goods, and services, provided as a  
 18 part of the practice of pharmacy ~~in Arkansas~~ as defined in § 17-92-101;  
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20            SECTION 3. Arkansas Code § 17-92-507(b), concerning Maximum Allowable  
 21 Cost Lists as relating to pharmacists and pharmacies, is amended to read as  
 22 follows:

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

25            (1) ~~Shall~~ If the drug is a generically equivalent drug as  
 26 defined in § 17-92-101, shall be listed as therapeutically equivalent and  
 27 pharmaceutically equivalent "A" or "B" rated in the United States Food and  
 28 Drug Administration's most recent version of the "Orange Book" or "Green  
 29 Book" or ~~has~~ have an NR or NA rating by ~~Medi-span~~ Medi-Span, Gold Standard,  
 30 or a similar rating by a nationally recognized reference;

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

33            (3) Shall not be obsolete.  
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35            SECTION 4. Arkansas Code § 17-92-507(c)(4), concerning Maximum  
 36 Allowable Cost Lists as relating to pharmacists and pharmacies, is amended to

1 read as follows:

2 (4)(A)(i) Provide a reasonable administrative appeal procedure  
3 to allow pharmacies to challenge maximum allowable ~~costs~~ cost list and  
4 reimbursements made under a maximum allowable cost list for a specific drug  
5 or drugs as:

6 (a) Not meeting the requirements of this  
7 section; or

8 (b) *Being below the pharmacy acquisition cost.*

9 (ii) The reasonable administrative appeal procedure shall  
10 include the following:

11 (a) A dedicated telephone number, ~~and~~ email  
12 address, and ~~or~~ website for the purpose of submitting administrative appeals;

13 (b) The ability to submit an administrative  
14 appeal directly to the pharmacy benefits manager regarding the pharmacy  
15 benefits plan or program or through a pharmacy service administrative  
16 organization; and

17 (c) No less than ~~seven-(7)~~ thirty (30)  
18 business days to file an administrative appeal.

19 (B) The pharmacy benefits manager shall respond to the  
20 challenge under subdivision (c)(4)(A) of this section within ~~seven-(7)~~ thirty  
21 (30) business days after receipt of the challenge.

22 (C) If a challenge is under subdivision (c)(4)(A) of this  
23 section, the pharmacy benefits manager shall within ~~seven-(7)~~ thirty (30)  
24 business days after receipt of the challenge either:

25 (i) If the appeal is upheld:

26 (a) Make the change in the maximum allowable  
27 cost list payment to at least the pharmacy acquisition cost;

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

30 (c) Provide the National Drug Code that the  
31 increase or change is based on to the pharmacy or pharmacist; and

32 (d) Make the change under subdivision  
33 (c)(4)(C)(i)(a) of this section effective for each similarly situated  
34 pharmacy as defined by the payor subject to the Maximum Allowable Cost List;

35 (ii) If the appeal is denied, provide the  
36 challenging pharmacy or pharmacist the National Drug Code and the name of the

1 national or regional pharmaceutical wholesalers operating in Arkansas that  
2 have the drug currently in stock at a price below the Maximum Allowable Cost  
3 List; or

4 (iii) If the National Drug Code provided by the  
5 pharmacy benefits manager is not available below the pharmacy acquisition  
6 cost from the pharmaceutical wholesaler from whom the pharmacy or pharmacist  
7 purchases the majority of prescription drugs for resale, then the pharmacy  
8 benefits manager shall adjust the Maximum Allowable Cost List above the  
9 *challenging pharmacy's pharmacy acquisition cost and permit* the pharmacy to  
10 reverse and rebill each claim affected by the inability to procure the drug  
11 at a cost that is equal to or less than the previously challenged maximum  
12 allowable cost.

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14 SECTION 5. Arkansas Code § 17-92-507(e), concerning Maximum Allowable  
15 Cost Lists as relating to pharmacists and pharmacies, is amended to read as  
16 follows:

17 (e) A pharmacy or pharmacist may decline to provide the pharmacist  
18 services to a patient or pharmacy benefits manager if, as a result of a  
19 Maximum Allowable Cost List, a pharmacy or pharmacist is to be paid less than  
20 *the pharmacy acquisition cost of the pharmacy providing pharmacist services.*

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22 SECTION 6. Arkansas Code § 23-92-503(13), concerning the definition of  
23 "rebate" under the Arkansas Pharmacy Benefits Manager Licensure Act, is  
24 amended to read as follows:

25 (13)(A) "Rebate" means a discount or other price concession, or  
26 a payment that is:

27 (i) ~~based~~ Based on utilization of a prescription  
28 drug; and

29 (ii) ~~that is paid~~ Paid by a manufacturer or third  
30 party, directly or indirectly, to a pharmacy benefits manager, pharmacy  
31 services administrative organization, or pharmacy after a claim has been  
32 processed and paid at a pharmacy.

33 (B) "Rebate" includes without limitation incentives,  
34 disbursements, and reasonable estimates of a volume-based discount; and  
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36 SECTION 7. Arkansas Code § 23-92-503, concerning the definitions to be

1 used under the Arkansas Pharmacy Benefits Manager Licensure Act, is amended  
2 to add an additional subdivision to read as follows:

3 (15) "Spread pricing" means the model of prescription drug  
4 pricing in which the pharmacy benefits manager charges a health benefit plan  
5 a contracted price for prescription drugs, and the contracted price for the  
6 prescription drugs differs from the amount the pharmacy benefits manager  
7 directly or indirectly pays the pharmacist or pharmacy for pharmacist  
8 services.

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10 SECTION 8. Arkansas Code § 23-92-505 is amended to read as follows:

11 23-92-505. Pharmacy benefits manager network adequacy.

12 (a) A pharmacy benefits manager shall provide:

13 (1)(A) A reasonably adequate and accessible pharmacy benefits  
14 manager network for the provision of prescription drugs for a health benefit  
15 plan that shall provide for convenient patient access to pharmacies within a  
16 reasonable distance from a patient's residence.

17 (B) A mail-order pharmacy shall not be included in the  
18 calculations determining pharmacy benefits manager network adequacy; and

19 (2) A pharmacy benefits manager network adequacy report  
20 describing the pharmacy benefits manager network and the pharmacy benefits  
21 manager network's accessibility in this state in the time and manner required  
22 by rule issued by the State Insurance Department.

23 (b)(1) A pharmacy benefits manager shall report to the Insurance  
24 Commissioner on a quarterly basis for each healthcare insurer the following  
25 information:

26 (A) The aggregate amount of rebates received by the  
27 pharmacy benefits manager;

28 (B) The aggregate amount of rebates distributed to the  
29 appropriate healthcare insurer;

30 (C) The aggregate amount of rebates passed on to the  
31 enrollees of each healthcare insurer at the point of sale that reduced the  
32 enrollees applicable deductible, copayment, coinsurance, or other cost-  
33 sharing amount;

34 (D) The individual and aggregate amount paid by the  
35 healthcare insurer to the pharmacy benefits manager for pharmacist services  
36 itemized by pharmacy, by product, and by goods and services; and

1 (E) The individual and aggregate amount a pharmacy  
2 benefits manager paid for pharmacist services itemized by pharmacy, by  
3 product, and by goods and services.

4 (2) The report required under subdivision (b)(1) of this section  
5 is:

6 (A) Proprietary and confidential under § 23-61-107(a)(4)  
7 and § 23-61-207; and

8 (B) Not subject to the Freedom of Information Act of 1967,  
9 § 25-19-101 et seq.

10 (c) A pharmacy benefits manager is prohibited from conducting spread  
11 pricing in this state.

12  
13 SECTION 9. Arkansas Code § 23-92-506(b), concerning prohibited  
14 practices for a pharmacy benefits manager under the Arkansas Pharmacy  
15 Benefits Manager Licensure Act, is amended to read as follows:

16 (b) A pharmacy benefits manager or representative of a pharmacy  
17 benefits manager shall not:

18 (1) Cause or knowingly permit the use of any advertisement,  
19 promotion, solicitation, representation, proposal, or offer that is untrue,  
20 deceptive, or misleading;

21 (2) Unless reviewed and approved by the commissioner, charge a  
22 pharmacist or pharmacy a fee related to the adjudication of a claim,  
23 including without limitation a fee for:

24 (A) The receipt and processing of a pharmacy claim;

25 (B) The development or management of claims processing  
26 services in a pharmacy benefits manager network; or

27 (C) Participation in a pharmacy benefits manager network;

28 (3) Unless reviewed and approved by the commissioner in  
29 coordination with the Arkansas State Board of Pharmacy, require pharmacy  
30 accreditation standards or certification requirements inconsistent with, more  
31 stringent than, or in addition to requirements of the board;

32 (4)(A) Reimburse a pharmacy or pharmacist in the state an amount  
33 less than the amount that the pharmacy benefits manager reimburses a pharmacy  
34 benefits manager affiliate for providing the same pharmacist services.

35 (B) The amount shall be calculated on a per-unit basis  
36 using the same generic product identifier or generic code number; ~~or~~

1           (5)(A) Pay or reimburse a pharmacy or pharmacist for the  
2 ingredient drug product component of pharmacist services less than the  
3 national average drug acquisition cost or, if the national average drug  
4 acquisition cost is unavailable, the wholesale acquisition cost.

5           (B)(i) The Arkansas Employee Benefits Division community  
6 pharmacy reimbursement model for pharmacist services in partnership with the  
7 University of Arkansas for Medical Sciences based prescription drug program  
8 satisfies the intent of this subdivision.

9           (ii) A plan using the model described in subdivision  
10 (b)(5)(B)(i) of this section is exempt from complying with subdivision  
11 (b)(5)(A) of this section if the reimbursement model is maintained as  
12 determined by the Insurance Commissioner.

13           (iii) If a plan deviates from this reimbursement  
14 model, the plan shall be subject to subdivision (b)(5)(A) of this section;

15           (6) Make or permit any reduction of payment for pharmacist  
16 services by a pharmacy benefits manager or a healthcare insurer directly or  
17 indirectly to a pharmacy under a reconciliation process to an effective rate  
18 of reimbursement, including without limitation generic effective rates, brand  
19 effective rates, direct and indirect remuneration fees, or any other  
20 reduction or aggregate reduction of payment; or

21           (7) Do any combination of the actions listed in subdivisions  
22 ~~(b)(1)~~—(4) (b)(1)-(6) of this section.

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24           SECTION 10. Arkansas Code § 23-92-506(c), concerning the denial of  
25 claims for pharmacist services, is amended to read as follows:

26           (c) A claim or aggregate of claims for pharmacist services shall not  
27 be directly or indirectly retroactively denied or reduced after adjudication  
28 of the claim or aggregate of claims unless:

- 29           (1) The original claim was submitted fraudulently;  
30           (2) The original claim payment was incorrect because the  
31 pharmacy or pharmacist had already been paid for the pharmacist services; or  
32           (3) The pharmacist services were not properly rendered by the  
33 pharmacy or pharmacist.

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35           SECTION 11. Arkansas Code § 23-92-507, concerning the prohibition of  
36 gag clauses under the Arkansas Pharmacy Benefits Manager Licensure Act, is

1 amended to add an additional subsection to read as follows:

2 (e) Without limiting its application to any other plan or program,  
3 this section applies to an organization or entity directly or indirectly  
4 providing services to patients under the Medicaid Provider-Led Organized Care  
5 Act, § 20-77-2701 et seq., or any other Medicaid managed care program  
6 operating in this state.

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8 SECTION 12. Arkansas Code § 23-92-510, concerning the applicability of  
9 the Arkansas Pharmacy Benefits Manager Licensure Act, is amended to add an  
10 additional subsection to read as follows:

11 (c) Without limiting its application to any other plan or program,  
12 this section applies to an organization or entity directly or indirectly  
13 providing services to patients under the Medicaid Provider-Led Organized Care  
14 Act, § 20-77-2701 et seq. or any other Medicaid managed care program  
15 operating in this state.

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*/s/K. Hammer*

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**APPROVED: 4/15/19**

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