

**ARKANSAS SENATE**  
88th General Assembly - Regular Session, 2011  
**Amendment Form**

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**Subtitle of Senate Bill No. 939**

AN ACT TO ESTABLISH AND ASSESS A PROVIDER FEE ON PHARMACIES AND  
PHARMACISTS THE PROCEEDS OF WHICH WOULD BE DEDICATED TO THE  
ARKANSAS MEDICAID PHARMACY PROGRAM.

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**Amendment No. 1 to Senate Bill No. 939**

Amend Senate Bill No. 939 as originally introduced:

Page 1, line 9, delete "AND PHARMACISTS"

AND

Delete the subtitle in its entirety and substitute:

"AN ACT TO ESTABLISH AND ASSESS A  
PROVIDER FEE ON PHARMACIES THE PROCEEDS  
OF WHICH WOULD BE DEDICATED TO THE  
ARKANSAS MEDICAID PHARMACY PROGRAM."

AND

Delete everything after the enacting clause and substitute the following:

"SECTION 1. Arkansas Code Title 20, Chapter 77 is amended to add an  
additional subchapter to read as follows:

Subchapter 20 – Provider Fee on Pharmacies

20-77-2001. Definitions.

As used in this subchapter:



(1)(A) "Gross retail prescription receipts" means the amounts received by a licensed pharmacy for its own account from the sale of outpatient prescription drugs in this state.

(B) "Gross retail prescription receipts" includes the receipts from cost sharing, dispensing fees, and retail prescription drug sales.

(C) "Gross retail prescription receipts" does not include sales of outpatient prescription drugs shipped out of this state;

(2) "Licensed pharmacy" means a pharmacy licensed by the Arkansas State Board of Pharmacy;

(3) "Medicaid" means the medical assistance program established by Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq., and administered by the Division of Medical Services of the Department of Human Services; and

(4) "Retail" means a sale for use or consumption and not for resale.

20-77-2002. Assessment.

(a)(1) A provider fee is assessed on each licensed pharmacy for each state fiscal year in an amount calculated as a percentage of each licensed pharmacy's gross retail prescription receipts.

(2) The Director of the Division of Medical Services of the Department of Human Services shall administer the assessment program created in this subchapter.

(b) The Division of Medical Services of the Department of Human Services shall seek approval from the Centers for Medicare and Medicaid Services to treat the provider fee as an allowable cost for Medicaid reimbursement purposes.

(c) A provider of pharmacy services shall not be guaranteed, expressly or otherwise, that any additional moneys paid to the provider for services under this subchapter will equal or exceed the amount of the provider fee.

(d)(1) The division shall ensure that the rate of assessment of the provider fee established in this section equals but does not exceed, the maximum rate of assessment established under federal law and rule for health care-related provider fees without reduction in federal financial participation in Medicaid.

(2) If the division determines that the rate of the assessment of the provider fee established in this section exceeds the maximum rate of assessment that federal law and rule allow for health-care related provider fees without reduction in federal financial participation in Medicaid, the division shall lower the rate of assessment of the provider fee to a rate that is equal to the maximum rate that federal law and rule allow for healthcare related provider fees without reduction in federal financial participation in Medicaid.

20-77-2003. Calculation of tax liability – Notification to pharmacies – Quarterly adjustment authorized.

(a) The determination of the amount of the provider fee under this subchapter shall be the monthly gross retail prescription receipts reported to the Department of Finance and Administration under § 20-77-2005 multiplied by the tax rate established by rule by the Department of Human Services.

(b)(1) The tax rate established under this subchapter may be a graduated rate based on gross retail prescription receipts and shall not exceed a rate of six percent (6%) per year of gross retail prescription receipts.

(2) However, the rate shall not exceed one-tenth of one percent (0.1%) per year in the case of licensed pharmacies of which eighty percent (80%) or more of gross retail prescription receipts are attributable to prescription drugs that are delivered directly to the patient by common carrier, by mail, or by a courier service.

(c)(1) The Department of Human Services shall notify each licensed pharmacy of the amount of the provider fee that is due.

(2) The provider fee may be paid in increments over the balance of the assessment period.

(d)(1) The Department of Human Services may adjust the rate of the provider fee quarterly on a prospective basis.

(2) The Department of Human Services may adjust more frequently for individual providers if there is a substantial and statistically significant change in their pharmacy sales characteristics.

(3) The Department of Human Services may define the adjustment criteria for the provider fee by rule.

20-77-2004. Offset against Medicaid payments due from a licensed pharmacy.

(a) If a licensed pharmacy requests an offset of state Medicaid payment due from the licensed pharmacy, the Director of Division of Medical Services of the Department of Human Services may offset the provider fee state Medicaid payment due from that licensed pharmacy.

(b) The amount of an offset under subsection (a) of this section shall result, so far as practicable, in withholding from the licensed pharmacy an amount substantially equal to the provider fee due from the licensed pharmacy.

20-77-2005. Records – Report of gross retail prescription receipts – Confidentiality of information.

(a) Each licensed pharmacy shall keep records necessary to determine gross retail prescription receipts.

(b)(1) The Director of the Department of Finance and Administration may prescribe the form and contents of any forms or other documents required under this section.

(2) Each licensed pharmacy shall report the gross retail prescription receipts to the Department of Finance and Administration.

(3) The Department of Finance and Administration shall provide the Department of Human Services with the information necessary to implement this subchapter.

(4) The Department of Finance and Administration shall adopt rules to implement this subsection.

(c) The information obtained by the Department of Human Services from the Department of Finance and Administration is confidential and shall not be disclosed except as authorized under this subchapter.

20-77-2006. Notice requirements – Unpaid or delinquent taxes – Procedure for collection – Failure to pay taxes.

(a)(1) The Department of Human Services shall notify a licensed pharmacy if the licensed pharmacy has had a provider fee under this subchapter due for more than ninety (90) days.

(2) The notice required under subdivision (a)(1) of this section shall specify the amount of the provider fee that is due.

(3) If a licensed pharmacy fails to pay its provider fee due within thirty (30) days after receipt of the notice required under subdivision (a)(1) of this section, the licensed pharmacy provider fee is delinquent.

(b)(1) If a provider fee under this subchapter is unpaid and delinquent, the Department of Human Services may bring an action to compel the payment of the provider fee in the circuit court of the county in which the licensed pharmacy is located.

(2) The Department of Human Services may cancel or refuse to issue, extend, or reinstate a Medicaid provider agreement to a licensed pharmacy that fails to pay the provider fee under this subchapter.

(c) The Department of Human Services may request the Arkansas State Board of Pharmacy to deny, suspend, or revoke the license of a licensed pharmacy that fails to pay the provider fee assessed under this subchapter.

20-48-2007. Use of funds.

(a) The licensed pharmacy provider fee owed or, if an offset has been made, the balance after the offset, if any, shall be remitted by the licensed pharmacy to the Department of Human Services.

(b)(1) The provider fee assessed and collected under this subchapter shall be deposited into a designated account within the Arkansas Medicaid Program Trust Fund to provide payments for services related to the Medicaid pharmacy program.

(2) The designated account shall be separate and distinct from the general fund and shall be supplementary to the trust fund.

(c)(1) The designated account moneys in the trust fund from the provider fee imposed and collected under this subchapter that are unused at the end of a fiscal year shall be carried forward.

(2) The designated account moneys in the trust fund from the provider fee imposed and collected under this subchapter shall not be used to supplant other local, state, or federal funds.

(3) The designated account moneys in the trust fund from the provider fee imposed and collected under this subchapter shall be exempt from budgetary cuts, reductions, or eliminations caused by a deficiency of general revenues.

20-77-2008. Appeals.

Appeals regarding this subchapter shall be made to the Pulaski County Circuit Court.

20-77-2009. Rules.

The Department of Human Services shall adopt rules to implement this subchapter."

The Amendment was read the first time, rules suspended and read the second time and \_\_\_\_\_

By: Senator P. Malone

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Secretary