

1 State of Arkansas
2 88th General Assembly
3 Regular Session, 2011
4

As Engrossed: S3/17/11
A Bill

SENATE BILL 939

5 By: Senator P. Malone
6

7 **For An Act To Be Entitled**

8 AN ACT TO ESTABLISH AND ASSESS A PROVIDER FEE ON
9 PHARMACIES THE PROCEEDS OF WHICH WOULD BE DEDICATED
10 TO THE ARKANSAS MEDICAID PHARMACY PROGRAM; AND FOR
11 OTHER PURPOSES.
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13

14 **Subtitle**

15 *AN ACT TO ESTABLISH AND ASSESS A PROVIDER*
16 *FEE ON PHARMACIES THE PROCEEDS OF WHICH*
17 *WOULD BE DEDICATED TO THE ARKANSAS*
18 *MEDICAID PHARMACY PROGRAM.*
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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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23 *SECTION 1. Arkansas Code Title 20, Chapter 77 is amended to add an*
24 *additional subchapter to read as follows:*

25 *Subchapter 20 – Provider Fee on Pharmacies*

26
27 *20-77-2001. Definitions.*

28 *As used in this subchapter:*

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

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

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



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

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

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

9
10 20-77-2002. Assessment.

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

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

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

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

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

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

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2 20-77-2003. Calculation of tax liability – Notification to pharmacies
3 – Quarterly adjustment authorized.

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

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

12 (2) However, the rate shall not exceed one-tenth of one percent
13 (0.1%) per year in the case of licensed pharmacies of which eighty percent
14 (80%) or more of gross retail prescription receipts are attributable to
15 prescription drugs that are delivered directly to the patient by common
16 carrier, by mail, or by a courier service.

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

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

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

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

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

28
29 20-77-2004. Offset against Medicaid payments due from a licensed
30 pharmacy.

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

35 (b) The amount of an offset under subsection (a) of this section shall
36 result, so far as practicable, in withholding from the licensed pharmacy an

1 amount substantially equal to the provider fee due from the licensed
2 pharmacy.

3
4 20-77-2005. Records – Report of gross retail prescription receipts –
5 Confidentiality of information.

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

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

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

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

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

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

21
22 20-77-2006. Notice requirements – Unpaid or delinquent taxes –
23 Procedure for collection – Failure to pay taxes.

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

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

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

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

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

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

7
8 20-48-2007. Use of funds.

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

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

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

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

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

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

28
29 20-77-2008. Appeals.

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

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33 20-77-2009. Rules.

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

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/s/P. Malone