

1 State of Arkansas  
2 90th General Assembly  
3 Regular Session, 2015  
4

# A Bill

SENATE BILL 688

5 By: Senators Caldwell, Maloch, G. Stubblefield  
6 By: Representatives M. Gray, Vaught, Eubanks, Bragg  
7

## For An Act To Be Entitled

9 AN ACT TO AMEND THE LAWS REGARDING MAXIMUM ALLOWABLE  
10 COST LISTS; TO CREATE ACCOUNTABILITY IN THE  
11 ESTABLISHMENT OF PRESCRIPTION DRUG PRICING; AND FOR  
12 OTHER PURPOSES.  
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## Subtitle

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15 TO AMEND THE LAWS REGARDING MAXIMUM  
16 ALLOWABLE COST LISTS; AND TO CREATE  
17 ACCOUNTABILITY IN THE ESTABLISHMENT OF  
18 PRESCRIPTION DRUG PRICING.  
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
23

24 SECTION 1. Arkansas Code § 17-92-507 is amended to read as follows:  
25 17-92-507. Maximum Allowable Cost Lists.

26 (a) As used in this section:

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

30 (2) "Pharmaceutical wholesaler" means a person or entity that  
31 sells and distributes prescription pharmaceutical products, including without  
32 limitation a full line of brand-name, generic, and over-the-counter  
33 pharmaceuticals, and that offers regular and private delivery to a pharmacy;

34 ~~(3)~~ (3) "Pharmacist" means a licensed pharmacist as defined in §  
35 17-92-101;

36 ~~(3)~~ (4) "Pharmacist services" means products, goods, or services



1 provided as a part of the practice of pharmacy in Arkansas;

2 ~~(4)~~(5) "Pharmacy" means the same as in § 17-92-101;

3 ~~(5)~~(6) "Pharmacy acquisition cost" means the amount that a  
4 pharmaceutical wholesaler currently charges for a pharmaceutical product as  
5 listed on the pharmacy's billing invoice;

6 (7) "Pharmacy benefits manager" means an entity that administers  
7 or manages a pharmacy benefits plan or program; ~~and~~

8 (8) "Pharmacy benefits manager affiliate" means a pharmacy or  
9 pharmacist that directly or indirectly, through one (1) or more  
10 intermediaries owns or controls, is owned or controlled by, or is under  
11 common ownership or control with a pharmacy benefits manager; and

12 ~~(6)~~(9) "Pharmacy benefits plan or program" means a plan or  
13 program that pays for, reimburses, covers the cost of, or otherwise provides  
14 for pharmacist services to individuals who reside in or are employed in this  
15 state.

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

18 (1) Shall be listed as therapeutically equivalent and  
19 pharmaceutically equivalent "A" or ~~"B"~~ "AB" rated in the United States Food  
20 and Drug Administration's most recent version of the "Orange Book" or "Green  
21 Book" or has an NR or NA rating by Medi-span™ or a similar rating by a  
22 nationally recognized reference;

23 (2) Shall be available for purchase by each pharmacy in the  
24 state from national or regional wholesalers operating in ~~Arkansas~~, Arkansas;  
25 and

26 (3) Shall not be obsolete.

27 (c) A pharmacy benefits manager shall:

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

30 (2) Update its Maximum Allowable Cost List on a timely basis,  
31 but in no event longer than seven (7) calendar days from an increase of ten  
32 percent (10%) or more in the pharmacy acquisition cost or a change in the  
33 methodology on which the Maximum Allowable Cost List is based or in the value  
34 of a variable involved in the methodology;

35 (3) Provide a process for each pharmacy subject to the Maximum  
36 Allowable Cost List to receive prompt notification of an update to the

1 Maximum Allowable Cost List; and

2 (4)(A)(i) ~~Within three (3) business days after the applicable~~  
 3 ~~fill date, provide~~ Provide a reasonable administrative appeal procedure to  
 4 allow pharmacies to challenge maximum allowable costs for a specific drug or  
 5 drugs as:

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

8 ~~(ii)(b)~~ Being below the cost at which the pharmacy  
 9 may reasonably obtain the drug.

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

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

14 (b) The ability to submit an administrative  
 15 appeal directly to the pharmacy benefits manager regarding the pharmacy  
 16 benefits plan or program, or through a pharmacy third-party contacting  
 17 entity, including a pharmacy service administrative organization; and

18 (c) No less than seven (7) business days to  
 19 file an administrative appeal.

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

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

26 (i) If the appeal is upheld:

27 (a) Make the change in the maximum allowable  
 28 cost;

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

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

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

36 ~~or~~

1 (ii) If the appeal is denied, provide the  
2 challenging pharmacy or pharmacist the National Drug Code number ~~from~~ and the  
3 name of the national or regional pharmaceutical wholesalers operating in  
4 Arkansas that have the drug currently in stock at a price below the Maximum  
5 Allowable Cost List; or

6 (iii) If the National Drug Code number provided by  
7 the pharmacy benefits manager is not available below the pharmacy acquisition  
8 cost from the pharmaceutical wholesaler when the pharmacy or pharmacist  
9 purchases the majority of prescription drugs for resale, then the pharmacy  
10 benefits manager shall adjust the Maximum Allowable Cost List above the  
11 challenging pharmacy's pharmacy acquisition cost.

12 (d)(1) A pharmacy benefits manager shall be subject to disciplinary  
13 oversight by the Arkansas State Board of Pharmacy.

14 (2) The board may:

15 (A) Fine the pharmacy benefits manager or take other  
16 action against the pharmacy benefits manager; and

17 (B) Force a reasonable change in a Maximum Allowable Cost  
18 List if the administrative appeals procedure does not produce a resolution  
19 based on current product availability and pricing from pharmaceutical  
20 wholesalers in the state.

21 (e) A pharmacy benefits manager shall not reimburse a pharmacy or  
22 pharmacist in the state an amount less than the amount reimbursed to a  
23 pharmacy benefits manager affiliate for providing the same pharmacist  
24 services.

25 (f) A pharmacy or pharmacist may decline to provide the pharmacist  
26 services to a patient or pharmacy benefits manager if, as a result of a  
27 Maximum Allowable Cost List, a particular drug is purchased below the  
28 pharmacy acquisition cost of the pharmacy providing pharmacist services.

29 (g)(1) This section does not apply to a Maximum Allowable Cost List  
30 maintained by the Arkansas Medicaid Program.

31 (2) This section shall apply to the pharmacy benefits manager  
32 employed by the Arkansas Medicaid Program if, at any time, the Arkansas  
33 Medicaid Program engages the services of a pharmacy benefits manager to  
34 maintain a Maximum Allowable Cost List.

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