

1 State of Arkansas  
2 93rd General Assembly  
3 Regular Session, 2021  
4

# A Bill

HOUSE BILL 1569

5 By: Representatives Lundstrum, S. Smith  
6 By: Senator Teague  
7

## For An Act To Be Entitled

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

## Subtitle

14 TO ESTABLISH THE ARKANSAS FAIRNESS IN  
15 COST SHARING ACT.  
16

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18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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20 SECTION 1. TEMPORARY LANGUAGE. DO NOT CODIFY. Legislative findings  
21 and intent.

22 (a) The General Assembly finds that:

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

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

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

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

35 (5) Insurers unfairly increase cost-sharing burdens on patients  
36 by refusing to count third-party assistance toward a patient's cost-sharing



1 contributions;

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

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

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

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

16  
 17 SECTION 2. Arkansas Code Title 23, Chapter 79, is amended to add an  
 18 additional subchapter to read as follows:

19 Subchapter 21 – Arkansas Fairness in Cost Sharing Act

20  
 21 23-79-2101. Title.

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

24  
 25 23-79-2102. Definitions.

26 As used in this subchapter:

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

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

35 (3)(A) "Health benefit plan" means any individual, blanket, or  
 36 group plan, policy, or contract for healthcare services issued or delivered

1 by a healthcare insurer in this state.

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

3 (i) Accident-only plans;

4 (ii) Specified disease plans;

5 (iii) Disability income plans;

6 (iv) Plans that provide only for indemnity for  
 7 hospital confinement;

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

10 (vi) Other limited-benefit health insurance policies  
 11 or plans; or

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

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

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

23 (6) "Person" means a natural person, corporation, mutual  
 24 company, unincorporated association, partnership, joint venture, limited  
 25 liability company, trust, estate, foundation, not-for-profit corporation,  
 26 unincorporated organization, government, or governmental subdivision or  
 27 agency.

28  
 29 23-79-2103. Fairness in cost sharing.

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

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

36 (2)(A) Benefits offered through a health benefit plan under the

1 Evidenced-Based Prescription Drug Program of the College of Pharmacy of the  
 2 University of Arkansas Medical Sciences shall satisfy the requirements of  
 3 this act beginning on and after January 1, 2024, if the Insurance  
 4 Commissioner reports a failure to comply with this section to the Legislative  
 5 Council.

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

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

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

19  
 20 23-79-2104. Rules

21 (a) The Insurance Commissioner shall promulgate rules necessary to  
 22 carry out this subchapter.

23 (b) The rules promulgated under this section shall require a  
 24 healthcare insurer and the Director of the Evidenced-Based Prescription Drug  
 25 Program of the College of Pharmacy of the University of Arkansas Medical  
 26 Sciences to submit to the commissioner plan-specific information related to  
 27 savings and accountability to document how enrollees are realizing a cost  
 28 savings under each plan.

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

32 23-92-511. Fairness in cost sharing – Definitions.

33 (a) As used in this section:

34 (1) "Cost-sharing requirement" means a copayment, coinsurance,  
 35 deductible, or annual limitation on cost sharing, including without  
 36 limitation a limitation subject to the Patient Protection and Affordable Care

1 Act, Pub. L. No. 111-148, that is required by or on behalf of an enrollee in  
2 order to receive a specific healthcare service, including a prescription  
3 drug, covered by a health benefit plan;

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

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

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

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

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

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

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

32 (B)(i) Beginning on January 1, 2022, the Director of the  
33 Evidenced-Based Prescription Drug Program of the College of Pharmacy of the  
34 University of Arkansas Medical Sciences shall report quarterly to the  
35 commissioner, Arkansas Legislative Audit, and the Legislative Council  
36 concerning details of plan savings and how the process that is used benefits

1 an enrollee and the offered plan.

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

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

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

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

15  
 16 SECTION 4. TEMPORARY LANGUAGE. DO NOT CODIFY. Rules.

17 (a) The Insurance Commissioner shall promulgate rules necessary to  
 18 implement this act.

19 (b)(1) When adopting the initial rules to implement this act, the  
 20 final rule shall be filed with the Secretary of State for adoption under §  
 21 25-15-204(f):

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

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

25 (2) The commissioner shall file the proposed rule with the  
 26 Legislative Council under § 10-3-309(c) sufficiently in advance of January 1,  
 27 2022, so that the Legislative Council may consider the rule for approval  
 28 before January 1, 2022.

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