

1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013
4
5 By: Senator Caldwell

A Bill

SENATE BILL 1138

For An Act To Be Entitled

8 AN ACT TO PROVIDE FOR THE TRANSPARENCY OF MAXIMUM
9 ALLOWABLE COST LISTS FOR PRESCRIPTION DRUGS; AND FOR
10 OTHER PURPOSES.

Subtitle

14 TO REGULATE PHARMACY BENEFITS MANAGERS'
15 MAINTENANCE AND USE OF MAXIMUM ALLOWABLE
16 COST LISTS FOR PRESCRIPTION DRUGS.

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

21 SECTION 1. Arkansas Code Title 17, Chapter 92, Subchapter 5, is
22 amended to add an additional section to read as follows:

23 17-92-507. Maximum Allowable Cost Lists.

24 (a) As used in this section:

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

28 (2) "Pharmacy benefits manager" means an entity that administers
29 or manages a pharmacy benefits plan or program;

30 (3) "Pharmacy benefits plan or program" means a plan or program
31 that pays for, reimburses, covers the cost of, or otherwise provides for
32 pharmacist services to individuals who reside in or are employed in this
33 state;

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

36 (5) "Pharmacy" means the same as in § 17-92-101; and



1 (6) "Pharmacist services" means products, goods, or services
2 provided as a part of the practice of pharmacy to an individual who resides
3 in or is employed in this state.

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

6 (1) Shall be listed as pharmaceutically equivalent or AA or AB
7 rated in the United States Food and Drug Administration's most recent version
8 of the Orange Book;

9 (2) Shall be available for purchase by each pharmacy in the
10 state from national or regional wholesalers; and

11 (3) Shall not be obsolete or temporarily unavailable.

12 (c) A pharmacy benefits manager shall:

13 (1) Provide access to its Maximum Allowable Cost List to each
14 pharmacy and pharmacist subject to the Maximum Allowable Cost List;

15 (2) Ensure that each drug on its Maximum Allowable Cost List is
16 available to the retail class of trade at or below the maximum allowable cost
17 for the drug;

18 (3) Update its Maximum Allowable Cost List on a timely basis,
19 but in no event longer than seven (7) calendar days from a change in the
20 methodology on which the Maximum Allowable Cost List is based or in the value
21 of a variable involved in the methodology;

22 (4) Provide each pharmacy and pharmacist subject to the Maximum
23 Allowable Cost List with prompt notification of an update to the Maximum
24 Allowable Cost List; and

25 (5)(A) Within three (3) business days before the applicable fill
26 date, provide a reasonable administrative appeal procedure to allow
27 pharmacies and pharmacists to challenge maximum allowable costs for a
28 specific drug or drugs as not meeting the requirements of this section.

29 (B) The pharmacy benefits manager shall respond to the
30 challenge under subdivision (c)(5)(A) of this section within five (5)
31 business days after receipt of the challenge.

32 (C) If a challenge under subdivision (c)(5)(A) of this
33 section is based on subdivision (c)(2) of this section, the pharmacy benefits
34 manager shall within five (5) business days after receipt of the challenge
35 either:

36 (i) If the appeal is upheld:

1 (a) Make the change in the maximum allowable
2 cost retroactive to the fill date reported by the challenging pharmacy or
3 pharmacist;

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

6 (c) Make the change under subdivision
7 (c)(5)(C)(i)(a) of this section effective for each pharmacy and pharmacist
8 subject to the Maximum Allowable Cost List; or

9 (ii) If the appeal is denied:

10 (a) Provide the challenging pharmacy or
11 pharmacist the National Drug Code number and contact information of a
12 wholesaler from which the pharmacy or pharmacist can purchase the drug at or
13 below the maximum allowable cost; and

14 (b) Permit the challenging pharmacy or
15 pharmacist to reverse the claim in question and submit a new claim.

16 (d) A pharmacy benefits manager shall disclose promptly a change in
17 the maximum allowable cost for a drug on a pharmacy benefits manager's
18 Maximum Allowable Cost List to the pharmacy benefits plan or program.

19 (e) A pharmacy benefits manager shall not take direct or indirect
20 action against a pharmacy or pharmacist that refuses to sell a generic drug
21 for less than the pharmacy's or pharmacist's cost on the basis of the refusal
22 through termination of the pharmacy's or pharmacist's provider agreement,
23 through financial penalties, or otherwise.

24 (f) This section does not apply to a Maximum Allowable Cost List
25 maintained by the Medicaid program.

26 (g) A violation of this section is a deceptive and unconscionable
27 trade practice under § 4-88-101 et seq.

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