

1 State of Arkansas
2 94th General Assembly
3 Regular Session, 2023
4

A Bill

HOUSE BILL 1481

5 By: Representative Achor
6 By: Senator J. Boyd
7

For An Act To Be Entitled

9 AN ACT TO CREATE THE HEALTHCARE INSURER SHARE THE
10 SAVINGS ACT; TO CREATE THE ARKANSAS PHARMACY BENEFITS
11 MANAGER SHARE THE SAVINGS ACT; AND FOR OTHER
12 PURPOSES.
13
14

Subtitle

15 TO CREATE THE HEALTHCARE INSURER SHARE
16 THE SAVINGS ACT; AND TO CREATE THE
17 ARKANSAS PHARMACY BENEFITS MANAGER SHARE
18 THE SAVINGS ACT.
19
20
21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

24 SECTION 1. Arkansas Code Title 23, Chapter 79, is amended to add an
25 additional subchapter to read as follows:
26

27 Subchapter 24 – Healthcare Insurer Share the Savings Act
28

29 23-79-2401. Title.

30 This subchapter shall be known and may be cited as the "Healthcare
31 Insurer Share the Savings Act".
32

33 23-79-2402. Definitions.

34 As used in this subchapter:

35 (1) "Defined cost sharing" means a deductible payment or
36 coinsurance amount imposed on an enrollee for a covered prescription drug



1 under the enrollee's health benefit plan;

2 (2) "Enrollee" means an individual entitled to coverage of
 3 healthcare services from a healthcare insurer;

4 (3)(A) "Health benefit plan" means any individual, blanket, or
 5 group plan, policy, or contract for healthcare services issued or delivered
 6 by a healthcare insurer in this state.

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

8 (i) Accident-only plans;

9 (ii) Specified disease plans;

10 (iii) Disability income plans;

11 (iv) Plans that provide only for indemnity for
 12 hospital confinement;

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

15 (vi) Other limited-benefit health insurance policies
 16 or plans;

17 (vii) Health benefit plans provided under Arkansas
 18 Constitution, Article 5, § 32, the Workers' Compensation Law, § 11-9-101 et
 19 seq., or the Public Employee Workers' Compensation Act, § 21-5-601 et seq.;
 20 or

21 (viii) Any state or local governmental employee
 22 plan;

23 (4)(A) "Healthcare insurer" means a:

24 (i) Health insurance issuer that:

25 (a) Is subject to state law regulating
 26 insurance; and

27 (b) Offers health insurance coverage under 42
 28 U.S.C. § 300gg-91, as it existed on January 1, 2023;

29 (ii) Health maintenance organization; or

30 (iii) Hospital and medical service corporation.

31 (B) "Healthcare insurer" does not include an entity that
 32 provides only dental benefits or eye and vision care benefits;

33 (5) "Price protection rebate" means a negotiated price
 34 concession that accrues directly or indirectly to a healthcare insurer, or
 35 other party on behalf of the healthcare insurer, if there is an increase in
 36 the wholesale acquisition cost of a prescription drug above a specified

1 threshold; and

2 (6) "Rebate" means:

3 (A) A negotiated price concession, including without
 4 limitation base price concessions, whether described as a rebate or not,
 5 reasonable estimates of any price protection rebates, and performance-based
 6 price concessions that may accrue, directly or indirectly, to the healthcare
 7 insurer during the coverage year from a manufacturer or other party in
 8 connection with the dispensing or administration of a prescription drug; and

9 (B) Any reasonable estimate of a negotiated price
 10 concession, fee, and other administrative cost that is passed through, or is
 11 reasonably anticipated to be passed through, to the healthcare insurer and
 12 serves to reduce the healthcare insurer's liabilities for a prescription
 13 drug.

14
 15 23-79-2403. Implementation of subchapter – Requirements.

16 (a) An enrollee's defined cost sharing for a prescription drug shall
 17 be calculated at the point-of-sale based on a price that is reduced by an
 18 amount equal to at least one hundred percent (100%) of all rebates received,
 19 or to be received, in connection with the dispensing or administration of the
 20 prescription drug.

21 (b) This subchapter shall not preclude a healthcare insurer from
 22 decreasing an enrollee's defined cost sharing by an amount greater than that
 23 required under subsection (a) of this section.

24 (c) In implementing the requirements of this section, the state shall
 25 only regulate a healthcare insurer to the extent permissible under applicable
 26 law.

27 (d)(1) In complying with this section, a healthcare insurer or its
 28 agents shall not publish or otherwise reveal information regarding the actual
 29 amount of rebates a healthcare insurer receives on a product or therapeutic
 30 class of products, manufacturer, or pharmacy-specific basis.

31 (2) The information described in subdivision (d)(1) of this
 32 section is:

33 (A) Protected as a trade secret;

34 (B) Considered proprietary and confidential under § 23-61-
 35 107(a)(4) and § 23-61-207;

36 (C) Not subject to disclosure under the Freedom of

1 Information Act of 1967, § 25-19-101 et seq.; and

2 (D) Not to be disclosed:

3 (i) Directly or indirectly; or

4 (ii) In a manner that would:

5 (a) Allow for the identification of an
 6 individual product, therapeutic class of products, or manufacturer; or

7 (b) Have the potential to compromise the
 8 financial, competitive, or proprietary nature of the information.

9 (3) A healthcare insurer shall impose the confidentiality
 10 protections of this section on any vendor or downstream third party that
 11 performs healthcare or administrative services on behalf of the healthcare
 12 insurer that may receive or have access to rebate information.

13
 14 SECTION 2. Arkansas Code Title 23, Chapter 92, is amended to add an
 15 additional subchapter to read as follows:

16
 17 Subchapter 7 – Arkansas Pharmacy Benefits Manager Share the Savings Act

18
 19 23-92-701. Title.

20 This subchapter shall be known and may be cited as the "Arkansas
 21 Pharmacy Benefits Manager Share the Savings Act".

22
 23 23-92-702. Purpose.

24 The purpose of this subchapter is to require pharmacy benefits managers
 25 to share the benefit of rebates with enrollees in this state.

26
 27 23-92-703. Definitions.

28 As used in this subchapter:

29 (1) "Defined cost sharing" means a deductible payment or
 30 coinsurance amount imposed on an enrollee for a covered prescription drug
 31 under the enrollee's health benefit plan;

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

34 (3)(A) "Health benefit plan" means any individual, blanket, or
 35 group plan, policy, or contract for healthcare services issued or delivered
 36 by a healthcare insurer in this state.

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

2 (i) Accident-only plans;

3 (ii) Specified disease plans;

4 (iii) Disability income plans;

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

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

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

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

15 (viii) Any state or local governmental employee
 16 plan;

17 (4) "Healthcare insurer" means an insurance company that is
 18 subject to state law regulating insurance including without limitation a
 19 health maintenance organization or a hospital and medical service
 20 corporation;

21 (5) "Pharmacy benefits management service" means a service to:

22 (A) Negotiate the price of prescription drugs, including
 23 negotiating and contracting for direct or indirect rebates, discounts, or
 24 other price concessions;

25 (B) Manage any aspect of a prescription drug benefit,
 26 including without limitation:

27 (i) Claims processing services;

28 (ii) The performance of drug utilization review;

29 (iii) The processing of drug prior authorization
 30 requests;

31 (iv) The adjudication of appeals or grievances
 32 related to a prescription drug benefit;

33 (v) Controlling the cost of covered prescription
 34 drugs; or

35 (vi) The provision of services related to the
 36 services described under this subdivision (5)(B);

1 (C) Disburse or distribute rebates, manage or participate
2 in incentive programs or arrangements for pharmacist services, negotiate or
3 enter into contractual arrangements with pharmacists or pharmacies, or both,
4 develop formularies, or employ advertising or promotional services;

5 (D) Perform any other administrative, managerial,
6 clinical, pricing, financial, reimbursement, or billing service; and

7 (E) Perform any other services as the Insurance
8 Commissioner may include by rule;

9 (6)(A) "Pharmacy benefits manager" means a person, business, or
10 entity that, pursuant to a written agreement with a healthcare insurer or
11 health benefit plan, either directly or indirectly provides one (1) or more
12 pharmacy benefits management services on behalf of the healthcare insurer or
13 health benefit plan, and any agent, contractor, intermediary, affiliate,
14 subsidiary, or related entity of the person, business, or entity that
15 facilitates, provides, directs, or oversees the provision of the pharmacy
16 benefits management service or services.

17 (B) "Pharmacy benefits manager" does not include a:

18 (i) Healthcare facility licensed in Arkansas;

19 (ii) Healthcare professional licensed in Arkansas;

20 or

21 (iii) Consultant who only provides advice as to the
22 selection or performance of a pharmacy benefits manager;

23 (7) "Price protection rebate" means a negotiated price
24 concession that accrues directly or indirectly to a healthcare insurer, or
25 other party on behalf of the healthcare insurer, if there is an increase in
26 the wholesale acquisition cost of a prescription drug above a specified
27 threshold; and

28 (8) "Rebate" means:

29 (A) A negotiated price concession including without
30 limitation base price concessions, whether described as a rebate or not,
31 reasonable estimates of any price protection rebates, and performance-based
32 price concessions that may accrue, directly or indirectly, to the healthcare
33 insurer during the coverage year from a manufacturer or other party in
34 connection with the dispensing or administration of a prescription drug; and

35 (B) Any reasonable estimate of a negotiated price
36 concession, fee, and other administrative cost that is passed through, or is

1 reasonably anticipated to be passed through, to the healthcare insurer and
2 serves to reduce the healthcare insurer's liabilities for a prescription
3 drug.

4
5 23-92-704. Implementation of subchapter – Requirements.

6 (a) An enrollee's defined cost sharing for a prescription drug shall
7 be calculated at the point-of-sale based on a price that is reduced by an
8 amount equal to at least one hundred percent (100%) of all rebates received,
9 or to be received, in connection with the dispensing or administration of the
10 prescription drug.

11 (b) This subchapter shall not preclude a pharmacy benefits manager
12 from decreasing an enrollee's defined cost sharing by an amount greater than
13 that required under subsection (a) of this section.

14 (c)(1) A pharmacy benefits manager shall submit a certification to the
15 Insurance Commissioner by January 1 of each calendar year certifying that the
16 pharmacy benefits manager has complied with the requirements of this section
17 during the previous calendar year.

18 (2) The certification under subdivision (c)(1) of this section
19 shall be signed by the chief executive officer or chief financial officer of
20 the pharmacy benefits manager.

21 (3) The form of the certification shall:

22 (A) Be in a format approved or established by the
23 commissioner; and

24 (B) Include the pharmacy benefits manager's best estimate
25 of the aggregate amount of rebates used to reduce enrollee-defined cost
26 sharing for prescription drugs in the previous calendar year based on
27 information known to the pharmacy benefits manager as of the date of the
28 certification.

29 (d)(1) In complying with this section, a pharmacy benefits manager or
30 its agents shall not publish or otherwise reveal information regarding the
31 actual amount of rebates a pharmacy benefits manager receives on a product or
32 therapeutic class of products, manufacturer, or pharmacy-specific basis.

33 (2) The information described in subdivision (d)(1) of this
34 section is:

35 (A) Protected as a trade secret;

36 (B) Considered proprietary and confidential under § 23-61-

1 107(a)(4) and § 23-61-207;

2 (C) Not subject to disclosure under the Freedom of
3 Information Act of 1967, § 25-19-101 et seq.; and

4 (D) Not to be disclosed:

5 (i) Directly or indirectly; or

6 (ii) In a manner that would:

7 (a) Allow for the identification of an
8 individual product, therapeutic class of products, or manufacturer; or

9 (b) Have the potential to compromise the
10 financial, competitive, or proprietary nature of the information.

11 (3) A pharmacy benefits manager shall impose the confidentiality
12 protections of this section on any vendor or downstream third party that
13 performs healthcare services or administrative services on behalf of the
14 pharmacy benefits manager that may receive or have access to rebate
15 information.

16
17 SECTION 3. DO NOT CODIFY. Severability.

18 (a) In implementing this act, the state shall regulate a health
19 benefit plan, healthcare insurer, or pharmacy benefits manager only to the
20 extent permissible under applicable law.

21 (b)(1) The provisions of this act are severable.

22 (2) The invalidity of any provision of this act shall not affect
23 other provisions of this act that can be given effect without the invalid
24 provision.

25
26
27 **APPROVED: 3/21/23**
28
29
30
31
32
33
34
35
36