

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 84th General Assembly  
3 Regular Session, 2003  
4

*As Engrossed: S3/5/03 S3/11/03*

# A Bill

SENATE BILL 313

5 By: Senators Malone, *J. Bookout, Capps, Higginbothom, Horn, G. Jeffress, J. Jeffress, Miller, Trusty,*  
6 *Womack*  
7  
8

## For An Act To Be Entitled

10 AN ACT TO PROVIDE FOR THE REGULATION AND  
11 LICENSING OF PHARMACY BENEFIT MANAGERS; TO  
12 PROVIDE FOR CERTAIN POWERS AND DUTIES OF CERTAIN  
13 STATE AGENCIES AND OFFICERS; TO PRESCRIBE  
14 PENALTIES; AND FOR OTHER PURPOSES.  
15

## Subtitle

16 TO PROVIDE FOR THE REGULATION AND  
17 LICENSING OF PHARMACY BENEFIT MANAGERS.  
18  
19  
20

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

23 SECTION 1. Arkansas Code Title 17, Chapter 92, is amended to add an  
24 additional subchapter to read as follows:

25 17-92-1101. Title.

26 This subchapter shall be known and may be cited as the "Arkansas  
27 Pharmacy Benefit Management Regulation Act".  
28

29 17-92-1102. Purpose and intent.

30 (a)(1) This subchapter establishes standards and criteria for the  
31 regulation and licensing of pharmacy benefit managers.

32 (2) The purpose of this subchapter is to:

33 (A) Promote, preserve, and protect the public health,  
34 safety, and welfare through effective regulation and licensing of Pharmacy  
35 Benefit Managers;

36 (B) Provide for certain powers and duties for certain



1 state agencies and officers; and

2 (C) Prescribe penalties for violations of this subchapter.

3 (b) A pharmacy benefit manager is subject to this subchapter if the  
4 pharmacy benefit manager provides claims processing services, other  
5 prescription drug or device services, or both, to patients who are residents  
6 of Arkansas.

7 (c) No pharmacy benefit manager shall do business or provide services  
8 in Arkansas unless the pharmacy benefit manager is in full compliance with  
9 this subchapter.

10  
11 17-92-1103. Definitions.

12 For purposes of this subchapter:

13 (1) "Board" means the Arkansas State Board of Pharmacy;

14 (2) "Cease and desist order" means an order of the board or  
15 commissioner prohibiting a pharmacy benefit manager, other person, or entity  
16 from continuing a particular course of conduct which violates this subchapter  
17 or rules adopted under this subchapter;

18 (3) "Claims processing services" means the administrative services  
19 performed in connection with the processing and adjudication of claims  
20 relating to pharmacist's services, including, but not limited to, making  
21 payments to pharmacists and pharmacies;

22 (4) "Commissioner" means the Insurance Commissioner;

23 (5)(A) "Controlling interest" means that one (1) person, business, or  
24 other entity directly or indirectly, owns, controls, holds with the power to  
25 vote, or holds proxies representing fifty percent (50%) or more of the voting  
26 interests of another person, business, or other entity.

27 (B) "Common controlling interest" means that a controlling  
28 interest in two persons, businesses, or other entities is held by the same  
29 person, business, or other entity;

30 (6) "Maintenance drug" means a drug prescribed by a practitioner who  
31 is licensed to prescribe drugs and used to treat a medical condition for a  
32 period greater than thirty (30) days;

33 (7) "Multi source drug" means a drug that is stocked and available  
34 from three (3) or more suppliers;

35 (8) "Other prescription drug or device services" means services other  
36 than claims processing services, provided directly or indirectly by a

1 pharmacy benefit manager, whether in connection with or separate from claims  
2 processing services, including, but not limited to:

3 (A) Negotiating rebates, discounts, or other financial  
4 incentives and arrangements with drug companies;

5 (B) Disbursing or distributing rebates;

6 (C) Managing or participating in incentive programs or  
7 arrangements for pharmacist's services;

8 (D) Negotiating or entering into contractual arrangements with  
9 pharmacists, pharmacies, or both;

10 (E) Developing formularies;

11 (F) Designing prescription benefit programs; or

12 (G) Advertising or promoting claims processing services or other  
13 prescription drug or device services;

14 (9) "Pharmacist" means an individual licensed as a pharmacist by the  
15 board;

16 (10) "Pharmacist's services" means the practice of pharmacy as defined  
17 in § 17-92-101;

18 (11) "Pharmacy" means pharmacy as defined in § 17-92-101;

19 (12)(A) "Pharmacy benefits manager" means a person, business or other  
20 entity, and any wholly or partially owned or controlled subsidiary of a  
21 pharmacy benefits manager, that provides claims processing services, other  
22 prescription drug or device services, or both, to third parties.

23 (B) "Pharmacy benefits manager" does not include:

24 (i) Health care facilities licensed in Arkansas;

25 (ii) Healthcare professionals licensed in Arkansas;

26 (iii) Pharmacies licensed in Arkansas;

27 (iv) Insurance companies licensed in Arkansas;

28 (v) Health maintenance organizations licensed in Arkansas;

29 (vi) Unions; or

30 (vii) Consultants who only provide advice as to the  
31 selection or performance of a pharmacy benefits manager.

32 (13) "Single source drug" means a drug that is not a multi source  
33 drug;

34 (14)(A) "Third parties" means any person, business, or other entity  
35 other than a pharmacy benefits manager.

36 (B) "Third parties" does not include:

1 (i) A person, business, or other entity that holds a  
2 controlling interest in the pharmacy benefits manager;

3 (ii) A person, business, or other entity that shares  
4 common controlling interest with the pharmacy benefits manager;

5 (iii) A policyholder, insured, member, or enrollee of an  
6 insurance company licensed in Arkansas or a health maintenance organization  
7 licensed in Arkansas to the extent that claims processing services, other  
8 prescription drug or device services, or both, are provided to the  
9 policyholder, insured, member, or enrollee by a person, business, or other  
10 entity in which the insurance company or health maintenance organization  
11 holds a controlling interest or that shares common controlling interest with  
12 the insurance company or health maintenance organization; or

13 (iv) The Arkansas Comprehensive Health Insurance Pool to  
14 the extent that claims processing services, other prescription drug or device  
15 services, or both, are provided to it by a person, business, or other entity  
16 in which an insurance company licensed in Arkansas or health maintenance  
17 organization licensed in Arkansas holds a controlling interest or that shares  
18 common controlling interest with the insurance company or health maintenance  
19 organization; and

20 (15) "Usual and customary price" means the price that a pharmacist or  
21 pharmacy would have charged cash-paying patients, excluding patients where  
22 reimbursement rates are set by contract, for the same services on the same  
23 date.

24  
25 17-92-1104. Certificate of authority.

26 (a)(1) No person or organization shall establish, operate, or do  
27 business in Arkansas as a pharmacy benefits manager in Arkansas without  
28 obtaining a certificate of authority from the Arkansas State Board of  
29 Pharmacy in accordance with this subchapter and all applicable federal and  
30 state laws.

31 (2)(A) A pharmacy benefits manager doing business in Arkansas  
32 shall obtain a certificate of authority from the board within one hundred  
33 twenty (120) days of the effective date of this subchapter and every two (2)  
34 years thereafter.

35 (B) The certificate of authority shall expire on December  
36 31 in the year following the year the certificate of authority was first

1 issued, and then may be renewed for successive two-year periods.

2 (b)(1) Any organization or person may apply to the board to obtain a  
3 certificate of authority to establish and operate a pharmacy benefits manager  
4 under this subchapter.

5 (2) A nonrefundable application fee of three hundred dollars  
6 (\$300), payable to the board, shall accompany each application for a  
7 certificate of authority and each application for renewal of a certificate of  
8 authority.

9 (c) The board shall not issue a certificate of authority to any  
10 pharmacy benefits manager until the board is satisfied that the pharmacy  
11 benefits manager:

12 (1) Holds a current license issued by the commissioner to do  
13 business in Arkansas as a pharmacy benefits manager;

14 (2) Is ready and able to arrange for pharmacist's services in  
15 Arkansas;

16 (3) Meets the requirements set forth in this subchapter and in  
17 rules adopted under this subchapter; and

18 (4) Is in compliance with all applicable state and federal laws  
19 and regulations.

20 (d) The board may suspend or revoke any certificate of authority  
21 issued to a pharmacy benefits manager under this subchapter, deny an  
22 application for a certificate of authority to an applicant, or deny an  
23 application for renewal of a certificate of authority if it finds that:

24 (1) The pharmacy benefits manager is operating materially in  
25 contravention of:

26 (A) Its application or other information submitted as a  
27 part of its application for a certificate of authority or renewal of its  
28 certificate of authority; or

29 (B) Any condition imposed by the board with regard to the  
30 issuance or renewal of its certificate of authority;

31 (2) The pharmacy benefits manager does not arrange for  
32 pharmacist's services;

33 (3) The pharmacy benefits manager has failed to continuously  
34 meet the requirements for issuance of a certificate of authority as set forth  
35 in this subchapter, or any rules adopted under this subchapter;

36 (4) The pharmacy benefits manager has otherwise failed to

1 substantially comply with this subchapter or any rules adopted under this  
2 subchapter;

3 (5) The continued operation of the pharmacy benefits manager may  
4 be hazardous to patients; or

5 (6) The pharmacy benefits manager has failed to substantially  
6 comply with any applicable state or federal law or regulation.

7 (e)(1) When the certificate of authority of a pharmacy benefits  
8 manager is revoked, the manager shall:

9 (A) Proceed, immediately following the effective date of  
10 the order of revocation, to wind up its affairs; and

11 (B) Conduct no further business except as may be essential  
12 to the orderly conclusion of its affairs.

13 (2) The board may permit any further operation of the pharmacy  
14 benefits manager as the board may find to be in the best interest of patients  
15 to the end that patients will have the greatest practical opportunity to  
16 obtain pharmacist's services.

17  
18 17-92-1105. License to do business.

19 (a)(1) No person or organization shall establish or operate a pharmacy  
20 benefits manager in Arkansas without first obtaining a license from the  
21 commissioner in accordance with this subchapter and all applicable federal  
22 and state laws.

23 (2) A pharmacy benefits manager doing business in Arkansas shall  
24 obtain a license from the commissioner within sixty (60) days after the  
25 effective date of this subchapter and each year thereafter.

26 (b)(1) An application for a license to operate in Arkansas as a  
27 pharmacy benefits manager shall be in a form prescribed by the commissioner,  
28 and shall be verified by an officer or authorized representative of the  
29 pharmacy benefits manager.

30 (2) The application shall include at least the following:

31 (A) All organizational documents including but not limited  
32 to, articles of incorporation, bylaws, and other similar documents and any  
33 amendments;

34 (B) The names, addresses, and titles of individuals  
35 responsible for the business and services provided, including, all claims  
36 processing services and other prescription drug or device services;

1                   (C) The names, addresses, titles, and qualifications of  
2 the members and officers of the board of directors, board of trustees, or  
3 other governing body or committee, or the partners or owners in case of a  
4 partnership, other entity, or association;

5                   (D) A detailed description of the claims processing  
6 services and other prescription drug or device services provided or to be  
7 provided;

8                   (E) The name and address of the agent for service of  
9 process in Arkansas;

10                   (F) Financial statements for the current and the preceding  
11 year, showing the assets, liabilities, direct or indirect income, and any  
12 other sources of financial support sufficient as deemed by the commissioner  
13 to show financial stability and viability to meet its full obligations to  
14 pharmacies and pharmacists;

15                   (G) A bond in an amount determined by the commissioner by  
16 rule to ensure that funds received by the pharmacy benefits manager for  
17 pharmacist's services are, in fact, paid to appropriate pharmacies and  
18 pharmacists.

19                   (c) The commissioner shall not issue an annual pharmacy benefits  
20 manager license to do business in Arkansas to any pharmacy benefits manager  
21 until the commissioner is satisfied that the pharmacy benefits manager has:

22                   (1) Paid all fees, taxes, and charges required by law;

23                   (2) Filed a financial statement or statements and any reports,  
24 certificates, or other documents the commissioner considers necessary to  
25 secure a full and accurate knowledge of the pharmacy benefits manager's  
26 affairs and financial condition;

27                   (3)(A) Established its solvency; and

28                   (B) Satisfied the commissioner that the pharmacy benefits  
29 manager's financial condition, method of operation, and manner of doing  
30 business make it possible for the pharmacy benefits manager to meet its  
31 obligations to pharmacies and pharmacists;

32                   (4) Otherwise complied with all the requirements of law; and

33                   (5) Obtained a bond in an amount determined by the commissioner  
34 to ensure that funds received by the pharmacy benefits manager for  
35 pharmacist's services are, in fact, paid to appropriate pharmacies and  
36 pharmacists.

1           (d)(1) The annual pharmacy benefits manager's license shall be in  
2 addition to the certificate of authority issued by the Arkansas State Board  
3 of Pharmacy.

4           (2) A nonrefundable license application fee of five hundred  
5 dollars (\$500) shall accompany each application for a license to transact  
6 business in Arkansas.

7           (3) The fee shall be collected by the commissioner and paid  
8 directly into a special fund whose funds are not deposited in the State  
9 Treasury that shall provide expenses for the regulation, supervision, and  
10 examination of all entities subject to regulation under this subchapter.

11           (e) The pharmacy benefits manager license shall be signed by the  
12 commissioner or an authorized agent of the commissioner and shall expire one  
13 (1) year after the date the license becomes effective.

14           (f)(1) A pharmacy benefits manager transacting business in Arkansas  
15 shall obtain an annual renewal of its license from the commissioner.

16           (2) The commissioner may refuse to renew the license of any  
17 pharmacy benefits manager or may renew the license, subject to any  
18 restrictions considered appropriate by the commissioner, if the commissioner  
19 finds that the pharmacy benefits manager has not satisfied all the conditions  
20 stated in this subchapter.

21           (3)(A) Before denying renewal of a license, the commissioner  
22 shall provide the pharmacy benefits manager:

23                   (i) At least *thirty* (30) days' advance notice of the  
24 denial; and

25                   (ii) An opportunity to appear at a formal or  
26 informal hearing.

27           (B) The commissioner and the pharmacy benefits manager may  
28 jointly waive the required notice.

29  
30           17-92-1106. Rules.

31           (a) The Arkansas State Board of Pharmacy may adopt rules not  
32 inconsistent with this subchapter regulating pharmacy benefits managers with  
33 regard to professional, public health, and public safety issues.

34           (b) The Insurance Commissioner may adopt rules not inconsistent with  
35 this subchapter regulating pharmacy benefits managers with regard to business  
36 and financial issues.

1       (c) Rules adopted under this subchapter may set penalties including,  
2 but not limited to, monetary fines, for violations of this subchapter and  
3 rules adopted under this subchapter.

4  
5       17-92-1107. Annual statement.

6       (a)(1) A pharmacy benefits manager doing business in Arkansas shall  
7 file a statement with the commissioner annually by March 1.

8       (2) The statement shall be verified by at least two (2)  
9 principal officers of the pharmacy benefits manager and shall cover the  
10 preceding calendar year.

11       (b) The statement shall be on forms prescribed by the commissioner and  
12 shall include:

13       (1) A financial statement of the organization, including its  
14 balance sheet and income statement for the preceding year;

15       (2) The number and dollar value of claims for pharmacist's  
16 services processed by the pharmacy benefits manager during the preceding year  
17 with respect to patients who are residents of Arkansas; and

18       (3) Any other information relating to the operations of the  
19 pharmacy benefits manager required by the commissioner.

20       (c) If a pharmacy benefits manager is audited annually by an  
21 independent certified public accountant, a copy of each certified audit  
22 report shall be promptly filed with the commissioner.

23       (d)(1) The commissioner may extend the time prescribed for any  
24 pharmacy benefits manager for filing annual statements or other reports or  
25 exhibits for good cause shown.

26       (2) However, the commissioner may not extend the time for filing  
27 annual statements beyond sixty (60) days after the time prescribed in this  
28 section.

29       (3) Until the annual statement is filed, the commissioner may  
30 revoke or suspend the license of a pharmacy benefits manager that fails to  
31 file its annual statement within the time prescribed by this section.

32  
33       17-92-1108. Financial examination.

34       (a)(1) The commissioner shall biennially conduct financial reviews of  
35 all pharmacy benefits managers doing business in Arkansas pursuant to a  
36 schedule and in a manner established by rule.

1           (2) The examination shall verify:

2                   (A) The financial ability of the pharmacy benefits manager  
3 to meet its full obligations to pharmacies and pharmacists;

4                   (B) Information submitted to the commissioner as a part of  
5 an application for a license or renewal of a license; and

6                   (C) Compliance with § 17-92-1110(e).

7           (b) In lieu of, or in addition to, making the financial examination of  
8 a pharmacy benefits manager, the commissioner may accept the report of a  
9 financial examination of the pharmacy benefits manager under the laws of  
10 another state certified by its insurance commissioner, similar regulatory  
11 agency, or state health agency, to the extent that the report of financial  
12 examination covers the minimum requirements specified in subsection (a) of  
13 this section.

14           (c)(1) The commissioner shall coordinate financial examinations of  
15 pharmacy benefits managers to ensure an appropriate level of regulatory  
16 oversight and to avoid any undue duplication of effort or regulation.

17           (2) The pharmacy benefits manager being examined shall pay the  
18 cost of the examination.

19           (3) The cost of the examination shall be deposited in a special  
20 fund, whose funds are not deposited in the State Treasury that shall provide  
21 all expenses for the regulation, supervision, and examination of all entities  
22 subject to regulation under this subchapter.

23  
24           17-92-1109. Assessment.

25           (a) Except as provided in § 17-92-1108(c)(3), the expense of  
26 administering this subchapter incurred by the commissioner shall be assessed  
27 annually by the commissioner against all pharmacy benefits managers operating  
28 in Arkansas.

29           (b) The commissioner shall assess each pharmacy benefits manager  
30 annually for its share of the estimated commissioner's expenses with regard  
31 to this subchapter in proportion to the business done in Arkansas, as  
32 determined by the commissioner in the commissioner's reasonable discretion.

33           (c)(1) The commissioner shall give each pharmacy benefits manager  
34 notice of the assessment, which shall be paid to the commissioner before  
35 March 2 of each year.

36           (2) A pharmacy benefits manager that fails to pay the assessment

1 before March 2 of each year shall be subject to a penalty imposed by the  
2 commissioner.

3 (3) The penalty shall be ten (10%) percent of the assessment  
4 plus interest for the period between the due date and the date of full  
5 payment.

6 (4) If a payment is made in an amount later found to be in  
7 error, the commissioner shall:

8 (A) If an additional amount is due:

9 (i) Notify the pharmacy benefits manager of the  
10 additional amount due; and

11 (ii) Order the pharmacy benefits manager to pay the  
12 additional amount within fourteen (14) days of the date of the notice; or

13 (B) If an overpayment is made, order a refund to the pharmacy  
14 benefits manager.

15 (d)(1) If an assessment made under this subchapter is not paid to the  
16 commissioner by the prescribed date, the amount of the assessment, plus any  
17 penalty, may be recovered from the defaulting pharmacy benefits manager on  
18 motion of the commissioner made in the name, and for the use of, the State of  
19 Arkansas in the Circuit Court of Pulaski County, after ten (10) days' notice  
20 to the pharmacy benefits manager.

21 (2) The license of any defaulting pharmacy benefits manager to  
22 transact business in Arkansas may be revoked or suspended by the commissioner  
23 until the pharmacy benefits manager has paid the assessment.

24 (e) All fees assessed under this subchapter and paid to the  
25 commissioner shall be deposited in a special fund, whose funds are not  
26 deposited in the State Treasury that shall provide all expenses for the  
27 regulation, supervision, and examination by the commissioner of all entities  
28 subject to regulation under this subchapter.

29 (f) If a pharmacy benefits manager becomes insolvent or ceases to do  
30 business in Arkansas in any assessable or license year, the pharmacy benefits  
31 manager shall remain liable for the payment of the assessment for the period  
32 in which it operated as a pharmacy benefits manager in Arkansas.

33  
34 17-92-1110. Pharmacy benefits manager contracts.

35 (a)(1) A pharmacy benefits manager that contracts with a pharmacy or  
36 pharmacist to provide pharmacist's services in Arkansas shall first inform

1 the pharmacy or pharmacist in writing of the number of, and other relevant  
2 information concerning, patients to be served by the pharmacy or pharmacist  
3 under the contract.

4 (2) There shall be a separate contract with each pharmacy or  
5 pharmacist for each of the pharmacy benefits manager's provider networks.

6 (3) Contracts providing for indemnity of the pharmacy or  
7 pharmacist shall be separate from contracts providing for cash discounts.

8 (4) A pharmacy benefits manager shall not require that a  
9 pharmacy or pharmacist participate in one contract in order to participate in  
10 another contract.

11 (b) Each pharmacy benefits manager shall provide contracts to the  
12 pharmacies and pharmacists that are written in plain English, using terms  
13 that will be generally understood by pharmacists.

14 (c) All contracts between a pharmacy benefits manager and a pharmacy  
15 or pharmacist shall provide specific time limits for the pharmacy benefits  
16 manager to pay the pharmacy, pharmacist, or both, for pharmacist's services  
17 rendered.

18 (d)(1) No pharmacy benefits manager contract may mandate that any  
19 pharmacy or pharmacist change a patient's maintenance drug unless the  
20 prescribing practitioner so orders.

21 (2) No pharmacy benefits manager contract may mandate basic  
22 record keeping by any pharmacy or pharmacist that is more stringent than  
23 required by state or federal laws or regulations.

24 (e)(1) In handling moneys received by the pharmacy benefits manager  
25 for pharmacist's services, the pharmacy benefits manager acts as a fiduciary  
26 of the pharmacy, pharmacist, or both, who provided the pharmacist's services.

27 (2) A pharmacy benefits manager shall distribute all moneys the  
28 pharmacy benefits manager receives for pharmacist's services to the  
29 pharmacies and pharmacists who provided the pharmacist's services and shall  
30 do so within seven (7) business days of receipt of such monies by the  
31 pharmacy benefits manager.

32 (f)(1) A pharmacy benefits manager shall file its contract forms for  
33 contracts with pharmacies or pharmacists to provide pharmacist's services in  
34 Arkansas with the commissioner thirty (30) days before the first use of the  
35 contract forms in Arkansas.

36 (2)(A) The contract forms are approved unless the commissioner

1 disapproves the contract forms within thirty (30) days after filing with the  
2 commissioner.

3 (B) Disapproval shall be in writing, stating the reasons  
4 for the disapproval and a copy shall be delivered to the pharmacy benefits  
5 manager.

6 (C) The commissioner shall develop formal criteria for the  
7 approval and disapproval of pharmacy benefits manager contract forms.

8 (g)(1) A pharmacy benefits manager that initiates an audit of a  
9 pharmacy or pharmacist under the contract shall limit the audit to methods  
10 and procedures that are recognized as fair and equitable for both the  
11 pharmacy benefits manager and the pharmacy, pharmacist, or both.

12 (2) Extrapolation calculations in an audit are prohibited.

13 (3) A pharmacy benefits manager may not recoup any moneys due  
14 from an audit by setoff from future remittances until the results of the  
15 audit are finalized.

16 (h) Before terminating a pharmacy or pharmacist from a pharmacy  
17 benefits manager's provider network, the pharmacy benefits manager shall give  
18 the pharmacy or pharmacist a written explanation of the reason for the  
19 termination thirty (30) days before the actual termination unless the  
20 termination is taken in reaction to:

21 (1) Loss of license;

22 (2) Loss of professional liability insurance; or

23 (3) Conviction of fraud or misrepresentation.

24 (i)(1) No pharmacy or pharmacist may be held responsible for acts or  
25 omissions of a pharmacy benefits manager.

26 (2) No pharmacy benefits manager may be held responsible for the  
27 acts or omissions of a pharmacy or pharmacist.

28  
29 17-92-1111. Enforcement.

30 (a)(1) Enforcement of this subchapter shall be the responsibility of  
31 the board and the commissioner.

32 (2) The board, the commissioner, or both, shall take action or  
33 impose appropriate penalties to bring a noncomplying pharmacy benefits  
34 manager into full compliance with this subchapter or shall terminate the  
35 pharmacy benefits manager's certificate of authority or license.

36 (b)(1) The board and the commissioner shall each adopt procedures for

1 formal investigation of complaints concerning the failure of a pharmacy  
2 benefits manager to comply with this subchapter.

3 (2)(A) The commissioner shall refer a complaint received under  
4 this subchapter to the board if the complaint involves a professional or  
5 patient health or safety issue.

6 (B) The board shall refer a complaint received under this  
7 subchapter to the commissioner if the complaint involves a business or  
8 financial issue.

9 (3)(A) If the board or the commissioner has reason to believe  
10 that there may have been a violation of this subchapter, the board or  
11 commissioner shall issue and serve upon the pharmacy benefits manager a  
12 statement of the charges and a notice of a hearing.

13 (B) The hearing shall be held at a time and place fixed in  
14 the notice, and not be less than thirty (30) days after the notice is served.

15 (C) At the hearing, the pharmacy benefits manager shall  
16 have an opportunity to be heard and to show cause why the board or the  
17 commissioner should not:

18 (i) Issue a cease and desist order against the  
19 pharmacy benefits manager; or

20 (ii) Take any other necessary or appropriate action,  
21 including, but not limited to, termination of the pharmacy benefits manager's  
22 certificate of authority or license.

23 (c)(1) The board may conduct an investigation concerning the quality  
24 of services of any pharmacy benefits manager, pharmacy, or pharmacist with  
25 whom the pharmacy benefits manager has contracts, as the board deems  
26 necessary for the protection of the interests of the residents of Arkansas.

27 (2) In addition to applying penalties and remedies under this  
28 subchapter for a pharmacy benefits manager's violation of this subchapter,  
29 the board may also apply penalties and remedies under any other subchapter of  
30 Arkansas Code Title 17, Chapter 92 for violation of that chapter.

31  
32 17-92-1112. Medication Reimbursement Costs.

33 (a) Pharmacy benefits managers shall use a current nationally  
34 recognized benchmark to base reimbursements for medications and products  
35 dispensed by pharmacies or pharmacists with whom the pharmacy benefits  
36 manager contracts as follows:

1           (1) For brand single source drugs and brand multi source drugs,  
2 either the Average Wholesale Price as listed in First Data Bank, Hearst  
3 Publications, or Facts & Comparisons, formerly Medispan, shall be used as an  
4 index;

5           (2) For generic multi source drugs, maximum allowable costs  
6 shall be established by referencing the Baseline Price as listed in either  
7 First Data Bank or Facts & Comparisons;

8           (3) Only products that are in compliance with pharmacy laws as  
9 equivalent and generically interchangeable with a United States Food and Drug  
10 Administration Orange Book rating of "A" may be reimbursed from a maximum  
11 allowable cost price methodology;

12           (4) If a generic multi source drug product has no baseline  
13 price, then it shall be treated as a brand single source drug for the purpose  
14 of valuing reimbursement.

15           (b) If the publications specified in subsection (a) of this section  
16 cease to be nationally recognized benchmarks used to base reimbursement for  
17 medications and products dispensed by pharmacies and pharmacists, other  
18 current nationally recognized benchmarks, as are then current and in effect,  
19 may be utilized so long as the benchmark is established and published by a  
20 person, business, or other entity with which no pharmacy benefits manager has  
21 a financial or business interest or connection.

22  
23           17-92-1113. Prohibited practices.

24           (a) No pharmacy benefits manager, or representative of a pharmacy  
25 benefits manager, may cause or knowingly permit the use of any advertisement,  
26 promotion, solicitation, proposal or offer that is untrue, deceptive or  
27 misleading.

28           (b) No pharmacy benefits manager may discriminate on the basis of  
29 race, creed, color, sex, or religion in the selection of pharmacies or  
30 pharmacists with which the pharmacy benefits manager contracts.

31           (c) No pharmacy benefits manager may unreasonably discriminate against  
32 or between pharmacies or pharmacists.

33           (d)(1) A pharmacy benefits manager shall be entitled to access a  
34 pharmacy's or pharmacist's usual and customary price only for comparison to  
35 specific claims for payment made by the pharmacy or pharmacist to the  
36 pharmacy benefits manager.

1           (2) Usual and customary pricing is confidential and any other  
2 use or disclosure by the pharmacy benefits manager is prohibited.

3           (e)(1) Claims for pharmacist's services paid by a pharmacy benefits  
4 manager may not be retroactively denied or adjusted after adjudication of the  
5 claims, unless:

6                   (A) The original claim was submitted fraudulently;

7                   (B) The original claim payment was incorrect because the  
8 pharmacy or pharmacist had already been paid for the pharmacist's services;  
9 or

10                   (C) The pharmacist's services were not, in fact, rendered  
11 by the pharmacy or pharmacist;

12           (2) No acknowledgement of eligibility may be retroactively  
13 reversed.

14           (f) No pharmacy benefits manager may terminate a contract with a  
15 pharmacy or pharmacist, or terminate, suspend or otherwise limit the  
16 participation of a pharmacy or pharmacist in a pharmacy benefits manager's  
17 provider network, because:

18                   (1) The pharmacy or pharmacist expresses disagreement with the  
19 pharmacy benefits manager's decision to deny or limit benefits to a patient;

20                   (2) The pharmacist discusses with a patient any aspect of the  
21 patient's medical condition or treatment alternatives;

22                   (3) The pharmacist makes personal recommendations regarding  
23 selecting a pharmacy benefits manager based on the pharmacist's personal  
24 knowledge of the health needs of the patient;

25                   (4) The pharmacy or pharmacist protests or expresses disagreement  
26 with a decision, policy, or practice of the pharmacy benefits manager;

27                   (5) The pharmacy or pharmacist has, in good faith, communicated  
28 with or advocated on behalf of, any patient related to the needs of the  
29 patient regarding the method by which the pharmacy or pharmacist is  
30 compensated for services provided under the contract with the pharmacy  
31 benefits manager;

32                   (6) The pharmacy or pharmacist complains to the board or  
33 commissioner that the pharmacy benefits manager has failed to comply with  
34 this subchapter; or

35                   (7) The pharmacy or pharmacist asserts rights under the contract  
36 with the pharmacy benefits manager.

