

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 *As Engrossed: S3/5/03 S3/11/03 S3/18/03 H3/28/03*

2 84th General Assembly

# A Bill

3 Regular Session, 2003

SENATE BILL 313

4

5 By: Senators Malone, J. Bookout, Capps, Higginbotham, Horn, G. Jeffress, J. Jeffress, Miller, Trusty,  
6 Womack, *Holt*

7 *By: Representatives Biggs, Hutchinson, Mathis, Roebuck, Rosenbaum, Gillespie, Gipson, Lamoureux,*  
8 *Mack, Sullivan, C. Taylor, Bradford, Hickenbotham, Key, Parks, P. Bookout*

9

10

11

## For An Act To Be Entitled

12

AN ACT TO PROVIDE FOR THE REGULATION AND

13

LICENSING OF PHARMACY BENEFIT MANAGERS; TO

14

PROVIDE FOR CERTAIN POWERS AND DUTIES OF CERTAIN

15

STATE AGENCIES AND OFFICERS; TO PRESCRIBE

16

PENALTIES; AND FOR OTHER PURPOSES.

17

18

## Subtitle

19

TO PROVIDE FOR THE REGULATION AND

20

LICENSING OF PHARMACY BENEFIT MANAGERS.

21

22

23

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

24

25

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

27

17-92-1101. Title.

28

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

30

31

17-92-1102. Purpose and intent.

32

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

34

(2) The purpose of this subchapter is to:

35

(A) Promote, preserve, and protect the public health,  
36 safety, and welfare through effective regulation and licensing of Pharmacy



1 Benefit Managers;

2 (B) Provide for certain powers and duties for certain  
3 state agencies and officers; and

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

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

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

12  
13 17-92-1103. Definitions.

14 For purposes of this subchapter:

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

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

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

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

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

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

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

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

1       (8) “Other prescription drug or device services” means services other  
2 than claims processing services, provided directly or indirectly by a  
3 pharmacy benefit manager, whether in connection with or separate from claims  
4 processing services, including, but not limited to:

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

7           (B) Disbursing or distributing rebates;

8           (C) Managing or participating in incentive programs or  
9 arrangements for pharmacist’s services;

10          (D) Negotiating or entering into contractual arrangements with  
11 pharmacists, pharmacies, or both;

12          (E) Developing formularies;

13          (F) Designing prescription benefit programs; or

14          (G) Advertising or promoting claims processing services or other  
15 prescription drug or device services;

16       (9) “Pharmacist” means an individual licensed as a pharmacist by the  
17 board;

18       (10) “Pharmacist’s services” means the practice of pharmacy as defined  
19 in § 17-92-101;

20       (11) “Pharmacy” means pharmacy as defined in § 17-92-101;

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

25           (B) “Pharmacy benefits manager” does not include:

26           (i) Health care facilities licensed in Arkansas;

27           (ii) Healthcare professionals licensed in Arkansas;

28           (iii) Pharmacies licensed in Arkansas;

29           (iv) Insurance companies licensed in Arkansas;

30           (v) Health maintenance organizations licensed in Arkansas;

31           (vi) Unions; or

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

34       (13) “Single source drug” means a drug that is not a multi source  
35 drug;

36       (14)(A) “Third parties” means any person, business, or other entity

1 other than a pharmacy benefits manager.

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

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

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

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

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

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

26  
27 17-92-1104. Certificate of authority.

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

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

1                   (B) The certificate of authority shall expire on December  
2 31 in the year following the year the certificate of authority was first  
3 issued, and then may be renewed for successive two-year periods.

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

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

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

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

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

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

20                   (4) Is in compliance with all applicable state and federal laws  
21 and regulations.

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

26                   (1) The pharmacy benefits manager is operating materially in  
27 contravention of:

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

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

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

35                   (3) The pharmacy benefits manager has failed to continuously  
36 meet the requirements for issuance of a certificate of authority as set forth

1 in this subchapter, or any rules adopted under this subchapter;

2 (4) The pharmacy benefits manager has otherwise failed to  
3 substantially comply with this subchapter or any rules adopted under this  
4 subchapter;

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

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

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

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

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

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

19  
20 17-92-1105. License to do business.

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

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

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

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

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

36 (B) The names, addresses, and titles of individual

1 executives and managers responsible for the business and services provided,  
2 including, all claims processing services and other prescription drug or  
3 device services;

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

8 (D) A detailed description of the claims processing  
9 services and other prescription drug or device services provided or to be  
10 provided;

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

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

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

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

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

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

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

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

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

36 (5) Obtained a bond in an amount determined by the commissioner

1 to ensure that funds received by the pharmacy benefits manager for  
2 pharmacist's services are, in fact, paid to appropriate pharmacies and  
3 pharmacists.

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

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

10 (3)(A) The fee shall be collected by the commissioner and  
11 deposited as special revenues in the State Treasury to the credit of the  
12 Pharmacy Benefit Managers Licensing Fund which is created on the books of the  
13 Auditor of State, Treasurer of State, and Chief Fiscal Officer of the State.

14 (B) The fund shall be used to pay the expenses for the  
15 regulation, supervision, and examination of all entities subject to  
16 regulation under this subchapter.

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

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

22 (2) The commissioner may refuse to renew the license of any  
23 pharmacy benefits manager or may renew the license, subject to any  
24 restrictions considered appropriate by the commissioner, if the commissioner  
25 finds that the pharmacy benefits manager has not satisfied all the conditions  
26 stated in this subchapter.

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

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

31 (ii) An opportunity to appear at a formal or  
32 informal hearing.

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

35  
36 17-92-1106. Rules.

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

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

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

10  
11       17-92-1107. Annual statement.

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

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

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

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

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

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

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

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

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

36

1           17-92-1108. Assessment.

2           (a) The expense of administering this subchapter incurred by the  
3 commissioner shall be assessed annually by the commissioner against all  
4 pharmacy benefits managers operating in Arkansas.

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

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

12           (2) A pharmacy benefits manager that fails to pay the assessment  
13 before March 2 of each year shall be subject to a penalty imposed by the  
14 commissioner.

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

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

20                   (A) If an additional amount is due:

21                           (i) Notify the pharmacy benefits manager of the  
22 additional amount due; and

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

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

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

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

36           (e) All fees assessed under this subchapter shall be deposited into

1 the State Treasury to the credit of the Pharmacy Benefit Managers Licensing  
2 Fund created by § 17-92-1105.

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

7  
8 17-92-1109. Pharmacy benefits manager contracts.

9 (a)(1) A pharmacy benefits manager that contracts with a pharmacy or  
10 pharmacist to provide pharmacist's services in Arkansas shall first inform  
11 the pharmacy or pharmacist in writing of the number of, and other relevant  
12 information concerning, patients to be served.

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

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

17 (4) A pharmacy benefits manager shall not require that a  
18 pharmacy or pharmacist participate in one contract in order to participate in  
19 another contract.

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

23 (c) All contracts between a pharmacy benefits manager and a pharmacy  
24 or pharmacist shall provide specific time limits for the pharmacy benefits  
25 manager to pay the pharmacy, pharmacist, or both, for pharmacist's services  
26 rendered.

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

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

33 (e) A pharmacy benefits manager shall distribute all moneys the  
34 pharmacy benefits manager receives for pharmacist's services to the  
35 pharmacies and pharmacists who provided the pharmacist's services and shall  
36 do so within seven (7) business days of receipt of such monies by the

1 pharmacy benefits manager.

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

6 (2)(A) The contract forms are subject to approval by the  
7 commissioner.

8 (B) If the commissioner does not approve the forms within  
9 thirty (30) days of receipt, the forms shall be deemed disapproved.

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

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

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

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

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

25 (1) Loss of license;

26 (2) Loss of professional liability insurance; or

27 (3) Conviction of fraud or misrepresentation.

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

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

32  
33 17-92-1110. Enforcement.

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

36 (2) The board, the commissioner, or both, shall take action or

1 impose appropriate penalties to bring a noncomplying pharmacy benefits  
2 manager into full compliance with this subchapter or shall terminate the  
3 pharmacy benefits manager's certificate of authority or license.

4 (b)(1) The board and the commissioner shall each adopt procedures for  
5 formal investigation of complaints concerning the failure of a pharmacy  
6 benefits manager to comply with this subchapter.

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

10 (B) The board shall refer a complaint received under this  
11 subchapter to the commissioner if the complaint involves a business or  
12 financial issue.

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

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

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

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

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

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

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

35  
36 17-92-1111. Medication Reimbursement Costs.

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

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

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

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

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

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

26  
27           17-92-1112. Prohibited practices.

28           (a) No pharmacy benefits manager, or representative of a pharmacy  
29 benefits manager, may cause or knowingly permit the use of any advertisement,  
30 promotion, solicitation, proposal or offer that is untrue, deceptive or  
31 misleading.

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

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

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

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

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

10                   (A) The original claim was submitted fraudulently;

11                   (B) The original claim payment was incorrect because the  
12 pharmacy or pharmacist had already been paid for the pharmacist's services;  
13 or

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

16           (2) No acknowledgement of eligibility may be retroactively  
17 reversed.

18           (f) No pharmacy benefits manager may terminate a contract with a  
19 pharmacy or pharmacist, or terminate, suspend or otherwise limit the  
20 participation of a pharmacy or pharmacist in a pharmacy benefits manager's  
21 provider network, because:

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

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

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

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

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

36                   (6) The pharmacy or pharmacist complains to the board or

1 commissioner that the pharmacy benefits manager has failed to comply with  
2 this subchapter; or

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

5 (g) Termination of a contract between a pharmacy benefits manager and  
6 a pharmacy or pharmacist, or termination of a pharmacy or pharmacist from a  
7 pharmacy benefits manager's provider network shall not release the pharmacy  
8 benefits manager from the obligation to make any payment due to the pharmacy  
9 or pharmacist for pharmacist's services rendered.

10 (h) No pharmacy benefits manager may intervene in the delivery or  
11 transmission of prescriptions from the prescriber to the pharmacist or  
12 pharmacy for the purpose of:

13 (1) Influencing the prescriber's choice of therapy;

14 (2) Influencing the patient's choice of pharmacist or pharmacy;

15 or

16 (3) Altering the prescription information, including but not  
17 limited to, switching the prescribed drug without the express authorization  
18 of the prescriber.

19 (i) No pharmacy benefits manager may engage in or interfere with the  
20 practice of medicine or intervene in the practice of medicine between  
21 prescribers and their patients.

22 (j) No pharmacy benefits manager may engage in any activity that  
23 violates any requirement of Arkansas Code Title 17, Chapter 92.

24  
25 17-92-1113. No impairment of existing contracts.

26 To avoid impairment of existing contracts, this subchapter shall apply  
27 only to contracts entered into or renewed after the effective date of this  
28 subchapter.

29  
30 17-92-1114. Supplemental nature.

31 This subchapter is supplemental to all other laws and repeals only  
32 those laws or parts of laws in direct conflict with it.

33  
34 */s/ Malone*