

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 8th General Assembly
3 Regular Session, 2005

A Bill

HOUSE BILL 2845

4
5 By: Representative Key
6
7

For An Act To Be Entitled

9 AN ACT TO ESTABLISH FAIR TRADE PRACTICES AND
10 LICENSING OF PHARMACY BENEFITS MANAGERS; TO
11 PROVIDE FOR CERTAIN POWERS AND DUTIES OF CERTAIN
12 STATE AGENCIES AND OFFICERS; TO PRESCRIBE
13 PENALTIES; AND FOR OTHER PURPOSES.
14

Subtitle

15 THE ARKANSAS PHARMACY BENEFITS MANAGERS
16 FAIR TRADE PRACTICES ACT.
17
18
19

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

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

24 17-92-1101. Title.

25 This subchapter shall be known and may be cited as the "Arkansas
26 Pharmacy Benefits Management Fair Trade Act".
27

28 17-92-1102. Purpose and intent.

29 (a)(1) This subchapter establishes standards and criteria for the
30 trade practices and licensing of pharmacy benefits managers.

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

32 (A) Promote, preserve, and protect the public health,
33 safety, and welfare through effective regulation and licensing of pharmacy
34 benefits managers;

35 (B) Provide for certain powers and duties for certain
36 state agencies and officers; and



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

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

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

9

10 17-92-1103. Definitions.

11 As used in this subchapter:

12 (1) "Cease and desist order" means an order of the commissioner
13 prohibiting a pharmacy benefits manager, other person, or entity from
14 continuing a particular course of conduct that violates this subchapter or
15 rules adopted under this subchapter;

16 (2) "Claims processing services" means the administrative
17 services performed in connection with the processing and adjudication of
18 claims relating to pharmacist's services that include either receiving
19 payments for a pharmacist's services or making payments to pharmacists or
20 pharmacies for a pharmacist's services, or both;

21 (3) "Commissioner" means the Insurance Commissioner;

22 (4) "Other prescription drug or device services" means services
23 other than claims processing services, provided directly or indirectly by a
24 pharmacy benefits manager, whether in connection with or separate from claims
25 processing services, including, but not limited to:

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

28 (B) Disbursing or distributing rebates;

29 (C) Managing or participating in incentive programs or
30 arrangements for a pharmacist's services;

31 (D) Negotiating or entering into contractual arrangements
32 with pharmacists or pharmacies, or both;

33 (E) Developing formularies;

34 (F) Designing prescription benefit programs; or

35 (G) Advertising or promoting claims processing services or
36 other prescription drug or device services;

1 (5) "Pharmacist" means an individual licensed as a pharmacist by
2 the Arkansas State Board of Pharmacy;

3 (6) "Pharmacist's services" means the practice of pharmacy as
4 defined in § 17-92-101, excluding claims processing services and services
5 described in subdivisions (4)(A) - (G) of this section;

6 (7) "Pharmacy" means pharmacy as defined in § 17-92-101;

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

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

12 (i) Health care facilities licensed in Arkansas;

13 (ii) Healthcare professionals licensed in Arkansas;

14 (iii) Pharmacies licensed in Arkansas;

15 (iv) Insurance companies licensed in Arkansas to
16 provide accident and health insurance as defined in § 23-62-103, or the
17 subsidiary of a licensed insurance company, to the extent that the insurance
18 company or subsidiary provides claims processing services or other
19 prescription drug or device services, or both, solely to the insurance
20 company's policy holders or insureds or to the Arkansas Comprehensive Health
21 Insurance Pool;

22 (v) Health maintenance organizations licensed in
23 Arkansas to the extent that the health maintenance organization provides
24 claims processing services or other prescription drug or device services, or
25 both, solely to its enrollees;

26 (vi) Unions to the extent that the union provides
27 claims processing services or other prescription drug or device services, or
28 both, solely to its members; or

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

31 (9) "Pharmacy benefits manager contract" means a contract
32 between a pharmacy benefits manager and a pharmacy or pharmacist to provide
33 pharmacist's services in Arkansas;

34 (10) "Rebate" means any arrangement or program such as
35 incentives, rebates, discounts, disbursements, or any other similar financial
36 program or arrangement relating to income or consideration received or

1 negotiated, directly or indirectly, by or on behalf of a pharmacy benefits
 2 manager with any pharmaceutical company that relates to other prescription
 3 drug or device services;

4 (11) "Third parties" means any person, business, or other entity
 5 other than a pharmacy benefits manager; and

6 (12) "Usual and customary price" means the price that a
 7 pharmacist or pharmacy would have charged cash-paying patients, excluding
 8 patients when reimbursement rates are set by contract, for the same services
 9 on the same date.

10
 11 17-92-1104. License to do business.

12 (a)(1) No person or organization shall establish or operate a pharmacy
 13 benefits manager in Arkansas without first obtaining a license from the
 14 Insurance Commissioner in accordance with this subchapter and all applicable
 15 federal and state laws.

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

19 (b)(1) An application for a license to operate in Arkansas as a
 20 pharmacy benefits manager shall be in a form prescribed by the commissioner
 21 and shall be verified by an officer or authorized representative of the
 22 pharmacy benefits manager.

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

24 (A) All organizational documents, including, but not
 25 limited to, articles of incorporation, bylaws, and other similar documents
 26 and any amendments;

27 (B) The names, addresses, and titles of individual
 28 executives and managers responsible for the business and services provided,
 29 including all claims processing services and other prescription drug or
 30 device services;

31 (C) The names, addresses, titles, and qualifications of
 32 the members and officers of the board of directors, board of trustees, or
 33 other governing body or committee, or the partners or owners in case of a
 34 partnership, other entity, or association;

35 (D) A detailed description of the claims processing
 36 services and other prescription drug or device services provided or to be

1 provided;

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

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

9 (G) A bond in an amount determined by the commissioner by
 10 rule to ensure that funds received by the pharmacy benefits manager for
 11 pharmacist's services are, in fact, paid to appropriate pharmacies and
 12 pharmacists;

13 (H) All agreements to sell prescription drug data,
 14 including data concerning the prescribing practices of healthcare providers
 15 in the state; and

16 (I) Other information that the commissioner may require.

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

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

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

25 (3) Established its solvency;

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

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

34 (6) Is ready and able to arrange for pharmacist's services in
 35 Arkansas;

36 (7) Meets the requirements set forth in this subchapter and in

1 rules adopted under this subchapter; and

2 (8) Is in compliance with all applicable state and federal laws
 3 and regulations.

4 (d)(1) A nonrefundable license application fee of five hundred dollars
 5 (\$500) shall accompany each application for a license to transact business in
 6 Arkansas.

7 (2) 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 17-92-1105. Rules.

31 (a) The Insurance Commissioner may adopt rules not inconsistent with
 32 this subchapter regulating pharmacy benefits managers with regard to business
 33 and financial issues.

34 (b) Rules adopted under this subchapter may set penalties, including,
 35 but not limited to, monetary fines, for violations of this subchapter and
 36 rules adopted under this subchapter.

1
2 17-92-1106. Annual statement.

3 (a)(1) A pharmacy benefits manager doing business in Arkansas shall
4 file a statement with the Insurance Commissioner annually by March 1.

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

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

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

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

15 (3) A listing, by network, for each pharmacy with which the
16 pharmacy benefits manager has contracted to provide services to patients who
17 are residents of Arkansas; and

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

20 (c)(1) 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 (2) The commissioner may require by rule that the financial
24 statement required under § 17-92-1104(b)(2)(F), § 17-92-1104(c)(2), and § 17-
25 92-1105(b)(1) be audited financial statements.

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

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

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

35
36 17-92-1107. Assessment.

1 (a) The Insurance Commissioner may periodically assess the expense of
2 administering this subchapter against all pharmacy benefits managers
3 operating in Arkansas.

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

8 (c)(1)(A) The commissioner shall give each pharmacy benefits manager
9 notice of the assessment.

10 (B) The assessment shall be paid to the commissioner
11 within sixty (60) days after the notice is sent.

12 (2) A pharmacy benefits manager that fails to pay the assessment
13 within sixty (60) days after the notice is sent shall be subject to a penalty
14 imposed by the 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
26 pharmacy 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 Pulaski County Circuit Court after ten (10) days' notice to
32 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 and paid to the

1 commissioner shall be deposited in a special fund whose funds are not
 2 deposited in the State Treasury that shall provide all expenses for the
 3 regulation, supervision, and examination by the commissioner of all entities
 4 subject to regulation under this subchapter.

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

9
 10 17-92-1108. Pharmacy benefits manager contracts.

11 (a)(1) Before an initial or renewed execution of a pharmacy benefits
 12 manager contract, the pharmacy benefits manager shall inform the pharmacy or
 13 pharmacist in writing of the number of and other relevant information
 14 concerning patients eligible to be served under the pharmacy benefits manager
 15 contract.

16 (2) Before an initial or renewed execution of a pharmacy
 17 benefits manager contract, and thereafter upon reasonable request from a
 18 pharmacy or pharmacist with whom a pharmacy benefits manager contracts, a
 19 pharmacy benefits manager shall make available to the pharmacy or pharmacist
 20 any:

21 (A) Benchmark and rate used to compute reimbursement of
 22 the pharmacy or pharmacist for medications and products dispensed pursuant to
 23 the pharmacy benefits manager contract; and

24 (B) Schedule or other listing of maximum allowable costs.

25 (3) There shall be a separate pharmacy benefits manager contract
 26 with each pharmacy or pharmacist for each of the pharmacy benefits manager's
 27 provider networks.

28 (4) Pharmacy benefits manager contracts providing for indemnity
 29 of the pharmacy or pharmacist shall be separate from contracts providing for
 30 cash discounts.

31 (5) A pharmacy benefits manager shall not require that a
 32 pharmacy or pharmacist participate in one pharmacy benefits manager contract
 33 in order to participate in another pharmacy benefits manager contract.

34 (6) A pharmacy benefits manager shall not require that any other
 35 pharmacy or pharmacist also participate in a pharmacy benefits manager
 36 contract in order for a pharmacy or pharmacist to participate in the pharmacy

1 benefits manager contract.

2 (7) A pharmacy benefits manager shall not discriminate between
3 pharmacies or pharmacists on the basis of copayments or days of supply.

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

7 (c) All pharmacy benefits manager contracts shall provide specific
8 time limits for the pharmacy benefits manager to pay the pharmacy or
9 pharmacist, or both, for pharmacist's services rendered.

10 (d)(1) No pharmacy benefits manager contract shall mandate that any
11 pharmacy or pharmacist change a patient's maintenance drug unless the
12 prescribing practitioner so orders.

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

16 (3) All pharmacy benefits manager contracts shall require use of
17 uniform prescription drug information cards, as required by § 23-80-404 et
18 seq.

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

23 (2) A pharmacy benefits manager shall distribute all moneys the
24 pharmacy benefits manager receives for pharmacist's services to the
25 pharmacies and pharmacists who provided the pharmacist's services and shall
26 do so within a time established by the commissioner.

27 (3) A pharmacy benefits manager shall itemize by individual
28 claim the amounts the pharmacy benefits manager and any other person or
29 entity, or both, actually paid each pharmacy or pharmacist for pharmacist's
30 services on any invoice, statement, or remittance seeking any payment or
31 reimbursement for the pharmacist's services.

32 (f)(1) A pharmacy benefits manager shall file its contract forms for
33 pharmacy benefits manager contracts with the commissioner thirty (30) days
34 before the first use of the pharmacy benefits manager contract forms in
35 Arkansas.

36 (2)(A)(i) The pharmacy benefits manager contract forms are

1 subject to approval by the commissioner within thirty (30) days after filing.

2 (ii) No failure of the commissioner to disapprove
 3 any benefits manager contracts contract form shall serve as a waiver or
 4 otherwise preclude the commissioner from enforcing any provision of this
 5 subchapter.

6 (B) Disapproval shall be in writing, stating the reasons
 7 for the disapproval, and a copy shall be delivered to the pharmacy benefits
 8 manager.

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

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

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

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

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

24 (1) Loss of license;

25 (2) Loss of professional liability insurance; or

26 (3) Conviction of fraud or misrepresentation.

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

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

31
 32 17-92-1109. Enforcement.

33 (a)(1) Enforcement of this subchapter shall be the responsibility of
 34 the Insurance Commissioner.

35 (2) The commissioner directly or through an agent, may audit a
 36 pharmacy benefits manager for cause and, to the extent the commissioner

1 determines that a pharmacy benefits manager is not in compliance with the
 2 requirements of this subchapter, assess the costs of the audit against the
 3 pharmacy benefits manager.

4 (3) The commissioner shall take action or impose appropriate
 5 penalties to bring a noncomplying pharmacy benefits manager into full
 6 compliance with this subchapter or shall terminate the pharmacy benefits
 7 manager's license.

8 (b) The commissioner may suspend or revoke any license issued to a
 9 pharmacy benefits manager under this subchapter, deny an application for a
 10 license to an applicant, or deny an application for renewal of a license if
 11 the commissioner finds that:

12 (1) The pharmacy benefits manager is operating materially in
 13 contravention of:

14 (A) Its application or other information submitted as a
 15 part of its application for a license or renewal of its license; or

16 (B) Any condition imposed by the commissioner with regard
 17 to the issuance or renewal of its license;

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

20 (3) The pharmacy benefits manager has failed to continuously
 21 meet the requirements for issuance of a license as set forth in this
 22 subchapter or any rules adopted under this subchapter;

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

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

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

30 (c)(1) If the license of a pharmacy benefits manager is revoked, the
 31 pharmacy benefits manager shall:

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

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

36 (2) If the license of a pharmacy benefits manager has been

1 suspended or revoked, the commissioner may permit any temporary operation of
 2 the pharmacy benefits manager that the commissioner may find to be in the
 3 best interest of patients to the end that patients will have the greatest
 4 practical opportunity to obtain pharmacist's services.

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

8 (2) The commissioner may refer a complaint received under this
 9 subchapter to the Arkansas State Board of Pharmacy if the complaint involves
 10 a professional or patient health or safety issue.

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

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

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

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

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

26
 27 17-92-1110. Medication reimbursement costs.

28 (a) To the extent that a pharmacy benefits manager uses benchmarks in
 29 computing reimbursement for medications and products dispensed by pharmacies
 30 or pharmacists with whom the pharmacy benefits manager contracts, the
 31 benchmarks shall be current, nationally recognized benchmarks as follows:

32 (1) For brand drugs either the average wholesale price as listed
 33 in First Data Bank, Hearst Publications, or Facts & Comparisons, formerly
 34 Medispan, as they existed on January 1, 2005, shall be used as the benchmark;
 35 and

36 (2) For generic drugs, maximum allowable costs shall not be less

1 than the reasonably available market price.

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

9
10 17-92-1111. Prohibited practices.

11 (a) No pharmacy benefits manager or representative of a pharmacy
12 benefits manager may cause or knowingly permit the use of any advertisement,
13 promotion, solicitation, proposal, or offer that is untrue, deceptive, or
14 misleading.

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

18 (c)(1) A pharmacy benefits manager shall be entitled to access a
19 pharmacy's or pharmacist's usual and customary price only for comparison to
20 specific claims for payment made by the pharmacy or pharmacist to the
21 pharmacy benefits manager.

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

24 (d) No pharmacy benefits manager may receive or accept, directly or
25 indirectly, overtly or covertly, in cash or in kind, receive or accept any
26 rebate, kickback, or any special payment, favor, or advantage of any valuable
27 consideration or inducement for influencing or switching, in whole or in
28 part, a patient's drug product unless the rebate, kickback, payment, favor,
29 valuable consideration, or inducement is fully disclosed to the person,
30 business, or other entity that is purchasing pharmacist's services through
31 the pharmacy benefits manager.

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

35 (A) The original claim was submitted fraudulently;

36 (B) The original claim payment was incorrect because the

1 pharmacy or pharmacist had already been paid for the pharmacist's services;
 2 or

3 (C) The pharmacist's services were not, in fact, rendered
 4 by the pharmacy or pharmacist.

5 (2) No acknowledgement of eligibility may be retroactively
 6 reversed.

7 (f) No pharmacy benefits manager may terminate a contract with a
 8 pharmacy or pharmacist or terminate, suspend, or otherwise limit the
 9 participation of a pharmacy or pharmacist in a pharmacy benefits manager's
 10 provider network or audit a pharmacy or pharmacist, because:

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

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

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

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

21 (5) The pharmacy or pharmacist has, in good faith, communicated
 22 with or advocated on behalf of any patient related to the needs of the
 23 patient regarding the method by which the pharmacy or pharmacist is
 24 compensated for services provided under the contract with the pharmacy
 25 benefits manager;

26 (6) The pharmacy or pharmacist complains to the board or
 27 commissioner that the pharmacy benefits manager has failed to comply with
 28 this subchapter; or

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

31 (g) Termination of a pharmacy benefits manager contract or termination
 32 of a pharmacy or pharmacist from a pharmacy benefits manager's provider
 33 network shall not release the pharmacy benefits manager from the obligation
 34 to make any payment due to the pharmacy or pharmacist for pharmacist's
 35 services rendered.

36 (h) No pharmacy benefits manager may intervene in the delivery or

1 transmission of prescriptions from the prescriber to the pharmacist or
 2 pharmacy for the purpose of:

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

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

5 or

6 (3) Altering the prescription information, including, but not
 7 limited to, switching the prescribed drug without the express authorization
 8 of the prescriber.

9 (i) No pharmacy benefits manager may place two (2) drugs in the same
 10 category for application of a maximum allowable cost unless both drugs are in
 11 compliance with pharmacy laws as equivalent and generically interchangeable
 12 with a United States Food and Drug Administration Orange Book rating of "A.",
 13 as it existed on January 1, 2005.

14 (j) No pharmacy benefits manager may engage in or interfere with the
 15 practice of medicine or intervene in the practice of medicine between
 16 prescribers and their patients.

17 (k) No pharmacy benefits manager may engage in any activity that
 18 violates any requirement of this chapter.

19 (l) No pharmacy benefits manager may avoid responsibility for
 20 compliance with any provision of this subchapter through the use of an agent
 21 or contractor, through an administrator, or through delegation to another
 22 person or entity.

23
 24 17-92-1112. No impairment of existing contracts.

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

28
 29 17-92-1113. Supplemental nature.

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

32 (b) Specifically, nothing in this subchapter limits the power of the
 33 Arkansas State Board of Pharmacy to regulate the practice of pharmacy by any
 34 person, business, or other entity.

35
 36 17-92-1114. No effect on other causes of action.

1 Nothing in this subchapter shall be interpreted to prohibit, alter, or
2 limit in any way the power of the Attorney General from pursuing a cause of
3 action against a pharmacy benefits manager.

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