

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
4

As Engrossed: H3/17/05

A Bill

HOUSE BILL 2845

5 By: Representatives Key, Maxwell, Davenport, Abernathy, Bradford, Childers, Cooper, L. Evans,
6 Everett, R. Green, Harrelson, D. Johnson, Lamoureux, Mack, Nichols, Rainey, Rankin, Roebuck,
7 Rosenbaum, Sullivan, Thompson, Wyatt
8
9

For An Act To Be Entitled

11 AN ACT TO ESTABLISH FAIR TRADE PRACTICES AND
12 LICENSING OF PHARMACY BENEFITS MANAGERS; TO
13 PROVIDE FOR CERTAIN POWERS AND DUTIES OF CERTAIN
14 STATE AGENCIES AND OFFICERS; TO PRESCRIBE
15 PENALTIES; AND FOR OTHER PURPOSES.
16

Subtitle

18 THE ARKANSAS PHARMACY BENEFITS MANAGERS
19 FAIR TRADE PRACTICES ACT.
20
21

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

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

26 17-92-1101. Title.

27 This subchapter shall be known and may be cited as the "Arkansas
28 Pharmacy Benefits Management Fair Trade Act".
29

30 17-92-1102. Purpose and intent.

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

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

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



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

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

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

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

11
12 17-92-1103. Definitions.

13 As used in this subchapter:

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

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

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

24 (4) "Other prescription drug or device services" means services
25 other than claims processing services, provided directly or indirectly,
26 whether in connection with or separate from claims processing services,
27 including, but not limited to:

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

30 (B) Disbursing or distributing rebates;

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

33 (D) Negotiating or entering into contractual arrangements
34 with pharmacists or pharmacies, or both;

35 (E) Developing formularies;

36 (F) Designing prescription benefit programs; or

1 (G) Advertising or promoting claims processing services or
2 other prescription drug or device services;

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

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

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

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

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

14 (i) Health care facilities licensed in Arkansas;

15 (ii) Healthcare professionals licensed in Arkansas;

16 (iii) Pharmacies licensed in Arkansas;

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

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

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

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

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

36 (10) "Rebate" means any arrangement or program such as

1 incentives, rebates, discounts, disbursements, or any other similar financial
2 program or arrangement relating to income or consideration received or
3 negotiated, directly or indirectly, by or on behalf of a pharmacy benefits
4 manager with any pharmaceutical company that relates to other prescription
5 drug or device services;

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

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

12
13 17-92-1104. License to do business.

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

18 (2) A pharmacy benefits manager doing business in Arkansas shall
19 obtain a license from the commissioner within one hundred twenty (120) days
20 after the effective date of this subchapter and each year thereafter.

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

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

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

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

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

1 (D) A detailed description of the claims processing
2 services and other prescription drug or device services provided or to be
3 provided;

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

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

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

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

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

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) Established its solvency;

28 (4) 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 (5) Obtained a bond in an amount determined by the commissioner
33 to ensure that funds received by the pharmacy benefits manager for
34 pharmacist's services are, in fact, paid to appropriate pharmacies and
35 pharmacists;

36 (6) Is ready and able to arrange for pharmacist's services in

1 Arkansas;

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

4 (8) Is in compliance with all applicable state and federal laws
5 and regulations.

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

9 (2) The fee shall be collected by the commissioner and paid
10 directly into a special fund that shall provide expenses for the regulation,
11 supervision, and examination of all entities subject to regulation under this
12 subchapter.

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

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

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

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

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

27 (ii) An opportunity to appear at a formal or
28 informal hearing.

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

31
32 17-92-1105. Rules.

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

36 (b) Rules adopted under this subchapter may set penalties, including,

1 but not limited to, monetary fines, for violations of this subchapter and
2 rules adopted under this subchapter.

3
4 17-92-1106. Annual statement.

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

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

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

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

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

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

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

22 (c)(1) If a pharmacy benefits manager is audited annually by an
23 independent certified public accountant, a copy of each certified audit
24 report shall be promptly filed with the commissioner.

25 (2) The commissioner may require by rule that the financial
26 statement required under § 17-92-1104(b)(2)(F), § 17-92-1104(c)(2), and § 17-
27 92-1105(b)(1) be audited financial statements.

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

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

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

1
2 17-92-1107. Assessment.

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

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

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

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

14 (2) A pharmacy benefits manager that fails to pay the assessment
15 within sixty (60) days after the notice is sent shall be subject to a penalty
16 imposed by the commissioner.

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

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

22 (A) If an additional amount is due:

23 (i) Notify the pharmacy benefits manager of the
24 additional amount due; and

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

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

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

35 (2) The license of any defaulting pharmacy benefits manager to
36 transact business in Arkansas may be revoked or suspended by the commissioner

1 until the pharmacy benefits manager has paid the assessment.

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

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

11
12 17-92-1108. Pharmacy benefits manager contracts.

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

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

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

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

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

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

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

36 (6) A pharmacy benefits manager shall not require that any other

1 pharmacy or pharmacist also participate in a pharmacy benefits manager
2 contract in order for a pharmacy or pharmacist to participate in the pharmacy
3 benefits manager contract.

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

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

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

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

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

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

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

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

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

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

1 Arkansas.

2 (2)(A)(i) The pharmacy benefits manager contract forms are
3 subject to approval by the commissioner within thirty (30) days after filing.

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

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

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

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

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

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

21 (4) A pharmacy benefits manager may not retain any moneys
22 obtained from the audit of a pharmacy or pharmacist in excess of the actual
23 direct costs of conducting the audit.

24 (5) A pharmacy benefits manager may not recoup any moneys as a
25 result of the audit of a pharmacy or pharmacist unless the audit is concluded
26 within two (2) years after the pharmacist provides the services that are the
27 subject of the audit.

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

33 (1) Loss of license;

34 (2) Loss of professional liability insurance; or

35 (3) Conviction of fraud or misrepresentation.

36 (i)(1) No pharmacy or pharmacist may be held responsible for acts or

1 omissions of a pharmacy benefits manager.

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

4
5 17-92-1109. Enforcement.

6 (a)(1) Enforcement of this subchapter shall be the responsibility of
7 the Insurance Commissioner.

8 (2) The commissioner directly or through an agent, may audit a
9 pharmacy benefits manager for cause and, to the extent the commissioner
10 determines that a pharmacy benefits manager is not in compliance with the
11 requirements of this subchapter, assess the costs of the audit against the
12 pharmacy benefits manager.

13 (3) The commissioner shall take action or impose appropriate
14 penalties to bring a noncomplying pharmacy benefits manager into full
15 compliance with this subchapter or shall terminate the pharmacy benefits
16 manager's license.

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

21 (1) The pharmacy benefits manager is operating materially in
22 contravention of:

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

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

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

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

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

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

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

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

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

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

9 (2) If the license of a pharmacy benefits manager has been
10 suspended or revoked, the commissioner may permit any temporary operation of
11 the pharmacy benefits manager that the commissioner may find to be in the
12 best interest of patients to the end that patients will have the greatest
13 practical opportunity to obtain pharmacist's services.

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

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

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

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

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

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

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

35
36 17-92-1110. Medication reimbursement costs.

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

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

9 (2) For generic drugs, maximum allowable costs shall not be less
10 than the reasonably available market price.

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

18
19 17-92-1111. Prohibited practices.

20 (a) No pharmacy benefits manager or representative of a pharmacy
21 benefits manager may cause or knowingly permit the use of any advertisement,
22 promotion, solicitation, proposal, or offer that is untrue, deceptive, or
23 misleading.

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

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

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

33 (d) No pharmacy benefits manager may receive or accept, directly or
34 indirectly, overtly or covertly, in cash or in kind, receive or accept any
35 rebate, kickback, or any special payment, favor, or advantage of any valuable
36 consideration or inducement for influencing or switching, in whole or in

1 part, a patient's drug product unless the rebate, kickback, payment, favor,
2 valuable consideration, or inducement is fully disclosed by the pharmacy
3 benefits manager to the person, business, or other entity that is purchasing
4 pharmacist's services through the pharmacy benefits manager.

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

8 (A) The original claim was submitted fraudulently;

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

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

14 (2) No acknowledgement of eligibility may be retroactively
15 reversed.

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

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

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

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

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

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

35 (6) The pharmacy or pharmacist complains to the board or
36 commissioner that the pharmacy benefits manager has failed to comply with

1 this subchapter; or

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

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

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

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

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

14 or

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

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

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

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

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

32
33 17-92-1112. No impairment of existing contracts.

34 To avoid impairment of existing contracts, this subchapter shall apply
35 only to contracts entered into or renewed after the effective date of this
36 subchapter.

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17-92-1113. Supplemental nature.

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

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

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

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

/s/ Key, et al