

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 86th General Assembly  
3 Regular Session, 2007

# A Bill

HOUSE BILL 1821

4  
5 By: Representatives Maxwell, T. Bradford, J. Brown, Cheatham, Cornwell, Davenport, Dickinson, L.  
6 Evans, Everett, Hall, Harrelson, Key, Kidd, Lovell, Pennartz, Pierce, Pyle, J. Roebuck, Sample, Saunders,  
7 Shelby, Stewart, Sullivan, Wyatt  
8 By: Senators R. Thompson, J. Taylor, Luker, G. Jeffress, J. Jeffress, T. Smith

## For An Act To Be Entitled

9  
10  
11 AN ACT TO CREATE THE ARKANSAS FAIR TRADE  
12 PRACTICES FOR PHARMACY BENEFITS MANAGERS ACT; TO  
13 PROHIBIT DECEPTIVE AND UNCONSCIONABLE TRADE  
14 PRACTICES OF PHARMACY BENEFITS MANAGERS; TO  
15 PRESCRIBE PENALTIES; AND FOR OTHER PURPOSES.  
16

## Subtitle

17  
18 THE ARKANSAS FAIR TRADE PRACTICES FOR  
19 PHARMACY BENEFITS MANAGERS ACT.  
20

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

24  
25 SECTION 1. Arkansas Code Title 4, Chapter 88 is amended to add an  
26 additional subchapter to read as follows:

27 4-88-701. Title.

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

30  
31 4-88-702. Definitions.

32 As used in this subchapter:

33 (1)(A) "Covered entity" means:

34 (i) A hospital service corporation, a medical  
35 service corporation, a hospital and medical service corporation, an insurer,  
36 a health coverage plan, or a health maintenance organization;



1                   (ii) A health program administered by the state or  
2 any agency or department thereof; or

3                   (iii) An employer, labor union, or other group of  
4 persons.

5                   (B) "Covered entity" does not include a health plan that  
6 provides coverage only for accidental injury, specified disease, hospital  
7 indemnity, Medicare supplement, disability income, long-term care or other  
8 limited benefit health insurance policies and contracts;

9                   (2)(A) "Covered individual" means a member, a participant, an  
10 enrollee, a contract holder, a policy holder, or a beneficiary of a covered  
11 entity who is:

12                   (i) Employed in this state or resides in this state;  
13 and

14                   (ii) Provided coverage for pharmacist's services by  
15 the covered entity.

16                   (B) "Covered individual" includes a dependent or other  
17 individual provided such coverage through the policy, contract, or the plan  
18 for a covered individual;

19                   (3) "Labeler" means an entity or individual that receives  
20 prescription drugs from a manufacturer or a wholesaler and repackages those  
21 prescription drugs for later retail sale and that has a labeler code from the  
22 federal Food and Drug Administration under 21 C.F.R. § 270.20 (1999);

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

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

27                   (6) "Pharmacy" means a pharmacy as defined in § 17-92-101.

28                   (7)(A) "Pharmacy benefits management" means the administration  
29 or management by a third party of a covered entity's plan or program for the  
30 provision of pharmacist's services to covered individuals, including, without  
31 limitation, any of the following services provided as a part of the  
32 administration or management:

33                   (i) Procurement of prescription drugs at a  
34 negotiated rate for dispensation within this state to covered individuals;

35                   (ii) Mail service pharmacy;

36                   (iii) Claims processing, retail network management,

1 and payment of claims to pharmacies for prescription drugs dispensed to  
2 covered individuals;

3 (iv) Clinical formulary development and management  
4 services;

5 (v) Rebate contracting and administration;

6 (vi) Patient compliance, therapeutic intervention,  
7 and generic substitution programs; and

8 (vii) Disease management programs.

9 (B) The mere provision of pharmacist's services to covered  
10 individuals is not "pharmacy benefits management";

11 (8)(A) "Pharmacy benefits manager" means an entity that provides  
12 pharmacy benefits management.

13 (B) "Pharmacy benefits manager" includes an individual or  
14 entity that a pharmacy benefits manager contracts with to perform pharmacy  
15 benefits management for a covered entity; and

16 (9) "Third party" means an individual or entity other than the  
17 covered entity.

18  
19 4-88-703. Required practices.

20 (a) A pharmacy benefits manager shall act in good faith and in the  
21 best interests of the covered entity.

22 (b) A pharmacy benefits manager shall notify the covered entity in  
23 writing of any activity, policy, or practice of the pharmacy benefits manager  
24 that may present a conflict of interest between the pharmacy benefits manager  
25 and the covered entity.

26 (c) A pharmacy benefits manager shall disclose to the covered entity  
27 all arrangements for, and on request by the covered entity, shall disclose  
28 all financial terms for remuneration, directly or indirectly, of any kind,  
29 that apply between the pharmacy benefits manager and any prescription drug  
30 manufacturer or labeler, including, without limitation:

31 (1) Formulary management and prescription drug-switch programs;

32 (2) Educational support;

33 (3) Claims processing fees; and

34 (4) Data sales fees.

35 (d) A pharmacy benefits manager that derives any payment or benefit  
36 for the dispensation of prescription drugs within the State based on volume

1 of sales for certain prescription drugs or classes or brands of prescription  
2 drugs within the State shall disclose the payment or benefit to the covered  
3 entity.

4 (e)(1) A pharmacy benefits manager providing information under  
5 subsections (c) or (d) of this section to the covered entity may designate  
6 the material as confidential.

7 (2)(A) Information designated as confidential by a pharmacy  
8 benefits manager and provided to a covered entity under subsections (c) or  
9 (d) of this section may not be disclosed by the covered entity to any  
10 individual or entity without the consent of the pharmacy benefits manager.

11 (B) However, disclosure may be ordered by a court of  
12 competent jurisdiction for good cause shown or made in a court filing under  
13 seal unless or until otherwise ordered by a court.

14 (f)(1) A pharmacy benefits manager shall treat all data derived from  
15 transactions of a covered individual as confidential, and the pharmacy  
16 benefits manager may not disclose the information to any individual or entity  
17 without the consent of the covered entity.

18 (2) However, disclosure may be ordered by a court of competent  
19 jurisdiction for good cause shown or made in a court filing under seal unless  
20 or until otherwise ordered by a court.

21 (g)(1) If a pharmacy benefits manager makes a substitution of a  
22 prescription drug prescribed to a covered individual in which the substitute  
23 prescription drug costs the covered entity more than the prescribed drug, the  
24 pharmacy benefits manager shall disclose to the covered entity the net cost  
25 to the covered entity of both prescription drugs.

26 (2) A pharmacy benefits manager shall disclose to the covered  
27 entity any benefit or payment it directly or indirectly receives in any form  
28 as a result of prescription drug substitution.

29 (h)(1) A pharmacy benefits manager that reimburses pharmacies or  
30 pharmacists under contract for pharmacist's services according to a formula  
31 that uses a reference price or reference amount in the reimbursement  
32 calculation shall disclose to covered entities and such pharmacies or  
33 pharmacists the methodology used to determine its reference price or amount  
34 for each prescription drug reimbursement.

35 (2) If the reference price or reference amount is derived from a  
36 nationally recognized reference, the pharmacy benefits manager shall use the

1 most current version of the reference.

2 (i) A pharmacy benefits manager shall itemize by individual claim the  
3 amounts actually paid each pharmacy or pharmacist for pharmacist's services  
4 on any invoice, statement, or remittance seeking any payment or reimbursement  
5 for the pharmacist's services.

6 (j) A pharmacy benefits manager shall distribute all moneys the  
7 pharmacy benefits manager receives from a covered entity for pharmacist's  
8 services to the pharmacies or the pharmacists that provided the pharmacist's  
9 services and shall make the distribution within thirty (30) days after the  
10 date the pharmacist's services are rendered.

11 (k) A pharmacy benefits manager shall disclose to a covered entity all  
12 amounts retroactively denied or adjusted after adjudication of pharmacist's  
13 services and shall make the disclosure within thirty (30) days after the date  
14 the denial or recoupment is made.

15 (l) A pharmacy benefits manager shall disclose to a covered entity all  
16 amounts the pharmacy benefits manager recoups in an audit of pharmacist's  
17 services and shall make the disclosure within thirty (30) days after the date  
18 the recoupment is made.

19  
20 4-88-704. Prohibited practices.

21 (a) A pharmacy benefits manager or representative of a pharmacy  
22 benefits manager shall not cause or knowingly permit the use of any  
23 advertisement, promotion, solicitation, proposal, or offer that is untrue,  
24 deceptive, or misleading.

25 (b) A pharmacy benefits manager shall not terminate a contract with a  
26 pharmacy or pharmacist or terminate, suspend, or otherwise limit the  
27 participation of a pharmacy or pharmacist in a pharmacy benefits manager's  
28 provider network or audit a pharmacy or pharmacist, because a pharmacist  
29 exercises his professional responsibility to a patient, including, but not  
30 limited to:

31 (1) Discussing with a patient any aspect of the patient's  
32 medical condition or treatment alternatives;

33 (2) Communicating in good faith with or advocating on behalf of  
34 any patient related to the needs of the patient; or

35 (3) Complaining that the pharmacy benefits manager has failed to  
36 comply with this subchapter.

1           (c)(1) A pharmacy benefits manager shall not intervene in the  
2 transmission, electronic or otherwise, of prescriptions from the prescriber  
3 to the pharmacist or pharmacy for the purpose of:

4                   (A) Influencing the prescriber’s choice of therapy or  
5 prescribed drug;

6                   (B) Influencing the patient’s choice of pharmacist or  
7 pharmacy; or

8                   (C) Altering the prescription information.

9           (2) Subsection (c)(1) applies only to the transmission of a  
10 prescription from a prescriber to a pharmacist or pharmacy and shall not  
11 otherwise limit or restrict the formation, management, or operation of  
12 pharmacy networks, formulary management and development, or programs or  
13 processes of therapeutic intervention and generic substitution.

14           (d) A pharmacy benefits manager shall not engage in or interfere with  
15 the practice of medicine.

16           (e) A pharmacy benefits manager shall not avoid responsibility for  
17 compliance with any provision of this subchapter through the use of an agent  
18 or contractor, through an administrator, or through delegation to another  
19 individual or entity.

20  
21           4-88-705. Compliance.

22           Compliance with the requirements of this subchapter is required in all  
23 contracts for pharmacy benefits management between a covered entity and a  
24 pharmacy benefits manager.

25  
26           4-88-706. Enforcement.

27           Any violation of this subchapter is deemed to be a deceptive and  
28 unconscionable trade practice, subject to the provisions of § 4-88-101 et  
29 seq.

30  
31           4-88-707. No impairment of existing contracts.

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

35  
36           4-88-708. Trade Secrets.

1        (a) Neither the disclosure nor receipt of information disclosed  
2 pursuant to a requirement of this subchapter shall constitute  
3 "misappropriation" as defined in § 4-75-601(2).

4        (b) No information disclosed pursuant to a requirement of this  
5 subchapter shall lose by virtue of the disclosure any status as a "trade  
6 secret" as defined in § 4-75-601(4).

7  
8        4-88-709. No limitation on the authority of the Arkansas State Board  
9 of Pharmacy.

10        Nothing in this subchapter limits the authority of the Arkansas State  
11 Board of Pharmacy to regulate the practice of pharmacy by an individual,  
12 business, or other entity.

13  
14        4-88-710. No effect on other causes of action.

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

18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36