Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
89th General Assembly
Regular Session, 2013

By: Senator Caldwell

A Bill

For An Act To Be Entitled
AN ACT TO PROVIDE FOR THE TRANSPARENCY OF MAXIMUM ALLOWABLE COST LISTS FOR PRESCRIPTION DRUGS; AND FOR OTHER PURPOSES.

Subtitle
TO REGULATE PHARMACY BENEFITS MANAGERS’ MAINTENANCE AND USE OF MAXIMUM ALLOWABLE COST LISTS FOR PRESCRIPTION DRUGS.

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

SECTION 1. Arkansas Code Title 17, Chapter 92, Subchapter 5, is amended to add an additional section to read as follows:


(a) As used in this section:

(1) "Maximum Allowable Cost List" means a listing of generic drugs used by a pharmacy benefits manager setting the maximum allowable cost on which reimbursement to a pharmacy or pharmacist may be based;

(2) "Pharmacy benefits manager" means an entity that administers or manages a pharmacy benefits plan or program;

(3) "Pharmacy benefits plan or program" means a plan or program that pays for, reimburses, covers the cost of, or otherwise provides for pharmacist services to individuals who reside in or are employed in this state;

(4) "Pharmacist" means a licensed pharmacist as defined in § 17-92-101;

(5) "Pharmacy" means the same as in § 17-92-101; and
(6) "Pharmacist services" means products, goods, or services provided as a part of the practice of pharmacy to an individual who resides in or is employed in this state.

(b) Before a pharmacy benefits manager places or continues a particular generic drug on a Maximum Allowable Cost List, the drug:

(1) Shall be listed as pharmaceutically equivalent or AA or AB rated in the United States Food and Drug Administration’s most recent version of the Orange Book;

(2) Shall be available for purchase by each pharmacy in the state from national or regional wholesalers; and

(3) Shall not be obsolete or temporarily unavailable.

(c) A pharmacy benefits manager shall:

(1) Provide access to its Maximum Allowable Cost List to each pharmacy and pharmacist subject to the Maximum Allowable Cost List;

(2) Ensure that each drug on its Maximum Allowable Cost List is available to the retail class of trade at or below the maximum allowable cost for the drug;

(3) Update its Maximum Allowable Cost List on a timely basis, but in no event longer than seven (7) calendar days from a change in the methodology on which the Maximum Allowable Cost List is based or in the value of a variable involved in the methodology;

(4) Provide each pharmacy and pharmacist subject to the Maximum Allowable Cost List with prompt notification of an update to the Maximum Allowable Cost List; and

(5)(A) Within three (3) business days before the applicable fill date, provide a reasonable administrative appeal procedure to allow pharmacies and pharmacists to challenge maximum allowable costs for a specific drug or drugs as not meeting the requirements of this section.

(B) The pharmacy benefits manager shall respond to the challenge under subdivision (c)(5)(A) of this section within five (5) business days after receipt of the challenge.

(C) If a challenge under subdivision (c)(5)(A) of this section is based on subdivision (c)(2) of this section, the pharmacy benefits manager shall within five (5) business days after receipt of the challenge either:

(i) If the appeal is upheld:
(a) Make the change in the maximum allowable cost retroactive to the fill date reported by the challenging pharmacy or pharmacist;

(b) Permit the challenging pharmacy or pharmacist to reverse and rebill the claim in question; and

(c) Make the change under subdivision (c)(5)(C)(i)(a) of this section effective for each pharmacy and pharmacist subject to the Maximum Allowable Cost List; or

(ii) If the appeal is denied:

(a) Provide the challenging pharmacy or pharmacist the National Drug Code number and contact information of a wholesaler from which the pharmacy or pharmacist can purchase the drug at or below the maximum allowable cost; and

(b) Permit the challenging pharmacy or pharmacist to reverse the claim in question and submit a new claim.

(d) A pharmacy benefits manager shall disclose promptly a change in the maximum allowable cost for a drug on a pharmacy benefits manager’s Maximum Allowable Cost List to the pharmacy benefits plan or program.

(e) A pharmacy benefits manager shall not take direct or indirect action against a pharmacy or pharmacist that refuses to sell a generic drug for less than the pharmacy’s or pharmacist’s cost on the basis of the refusal through termination of the pharmacy’s or pharmacist’s provider agreement, through financial penalties, or otherwise.

(f) This section does not apply to a Maximum Allowable Cost List maintained by the Medicaid program.

(g) A violation of this section is a deceptive and unconscionable trade practice under § 4-88-101 et seq.