

1 State of Arkansas
2 92nd General Assembly
3 Regular Session, 2019
4
5 By: Senator K. Hammer

A Bill

SENATE BILL 520

For An Act To Be Entitled

8 AN ACT TO CLARIFY THE STATE INSURANCE DEPARTMENT'S
9 REGULATORY AND ENFORCEMENT AUTHORITY CONCERNING
10 PHARMACY BENEFITS MANAGERS; TO MODIFY THE ARKANSAS
11 PHARMACY BENEFITS MANAGER LICENSURE ACT; TO DECLARE
12 AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

16 TO CLARIFY THE STATE INSURANCE
17 DEPARTMENT'S REGULATORY AND ENFORCEMENT
18 AUTHORITY CONCERNING PHARMACY BENEFITS
19 MANAGERS; TO MODIFY THE ARKANSAS PHARMACY
20 BENEFITS MANAGER LICENSURE ACT; AND TO
21 DECLARE AN EMERGENCY.

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

26 SECTION 1. Arkansas Code § 17-92-507(a)(1), concerning the definition
27 of "Maximum Allowable Cost List" regarding Maximum Allowable Cost Lists as
28 relating to pharmacists and pharmacies, is amended to read as follows:

29 (1)(A) "Maximum Allowable Cost List" means a listing of drugs or
30 other methodology used by a pharmacy benefits manager, directly or
31 indirectly, setting the maximum allowable ~~cost on which reimbursement payment~~
32 to a pharmacy or pharmacist ~~may be based~~ for a generic drug, brand-name drug,
33 biologic product, or other prescription drug.

34 (B) "Maximum Allowable Cost List" includes without
35 limitation:

36 (i) Average acquisition cost, including national



- 1 average drug acquisition cost;
- 2 (ii) Average manufacturer price;
- 3 (iii) Average wholesale price;
- 4 (iv) Brand effective rate or generic effective rate;
- 5 (v) Discount indexing;
- 6 (vi) Federal upper limits;
- 7 (vii) Wholesale acquisition cost; and
- 8 (viii) Any other term that a pharmacy benefits
- 9 manager or a healthcare insurer may use to establish reimbursement rates to a
- 10 pharmacist or pharmacy for pharmacist services;

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12 SECTION 2. Arkansas Code § 17-92-507(a)(4), concerning the definition

13 of "pharmacist services" regarding services provided by pharmacists as

14 relating to pharmacists and pharmacies, is amended to read as follows:

15 (4) "Pharmacist services" means products, goods, ~~or~~ and

16 services, or any combination of products, goods, and services, provided as a

17 part of the practice of pharmacy ~~in Arkansas~~ as defined in § 17-92-101;

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19 SECTION 3. Arkansas Code § 17-92-507(a), concerning definitions

20 related to Maximum Allowable Cost Lists, is amended to add an additional

21 subdivision to read as follows:

22 (10)(A) "Professional dispensing fee" means the professional

23 dispensing fee approved by the Centers for Medicare and Medicaid Services for

24 the fee-for-service Arkansas Medicaid Program for preferred brand drugs and

25 generic drugs.

26 (B) "Professional dispensing fee" includes without

27 limitation:

28 (i) Pharmacy costs and expenses related to a

29 pharmacist's:

30 (a) Time spent checking the computer for

31 information about an individual's coverage;

32 (b) Performance of a drug utilization review

33 and preferred drug list review activities;

34 (c) Measurement or mixing of a covered

35 outpatient drug;

36 (d) Filling the container;

- 1 (e) Beneficiary counseling;
- 2 (f) Physically providing the completed
- 3 prescription to the patient;
- 4 (g) Delivery of the completed prescription;
- 5 and
- 6 (h) Special packaging of the completed
- 7 prescription; and
- 8 (ii) Overhead associated with maintaining the
- 9 facility and equipment necessary to operate the pharmacy.

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11 SECTION 4. Arkansas Code § 17-92-507(b), concerning Maximum Allowable
 12 Cost Lists as relating to pharmacists and pharmacies, is amended to read as
 13 follows:

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

16 (1) ~~Shall~~ If the drug is a generically equivalent drug as
 17 defined in § 17-92-101, shall be listed as therapeutically equivalent and
 18 pharmaceutically equivalent “A” or “B” rated in the United States Food and
 19 Drug Administration’s most recent version of the “Orange Book” or “Green
 20 Book” or ~~has~~ have an NR or NA rating by ~~Medi-span~~ Medi-Span, Gold Standard,
 21 or a similar rating by a nationally recognized reference;

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

24 (3) Shall not be obsolete.

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26 SECTION 5. Arkansas Code § 17-92-507(c)(4), concerning Maximum
 27 Allowable Cost Lists as relating to pharmacists and pharmacies, is amended to
 28 read as follows:

29 (4)(A)(i) Provide a reasonable administrative appeal procedure
 30 to allow pharmacies to challenge maximum allowable ~~costs~~ cost list and
 31 reimbursements made under a maximum allowable cost list for a specific drug
 32 or drugs as:

33 (a) Not meeting the requirements of this
 34 section; or

35 (b) Being below the pharmacy acquisition cost
 36 plus the professional dispensing fee, as well as an additional five percent

1 (5%) of the total reimbursement for pharmacist services for high-cost drugs
2 that are reimbursed at a rate that exceeds six hundred dollars (\$600) per
3 dispensing event of the pharmacy providing pharmacist services.

4 (ii) The reasonable administrative appeal procedure
5 shall include the following:

6 (a) A dedicated telephone number, ~~and~~ email
7 address, and ~~or~~ website for the purpose of submitting administrative appeals;

8 (b) The ability to submit an administrative
9 appeal directly to the pharmacy benefits manager regarding the pharmacy
10 benefits plan or program or through a pharmacy service administrative
11 organization; and

12 (c) No less than seven (7) business days to
13 file an administrative appeal.

14 (B) The pharmacy benefits manager shall respond to the
15 challenge under subdivision (c)(4)(A) of this section within seven (7)
16 business days after receipt of the challenge.

17 (C) If a challenge is under subdivision (c)(4)(A) of this
18 section, the pharmacy benefits manager shall within seven (7) business days
19 after receipt of the challenge either:

20 (i) If the appeal is upheld:

21 (a) Make the change in the maximum allowable
22 cost list payment to at least the pharmacy acquisition cost plus the
23 professional dispensing fee, as well as an additional five percent (5%) of
24 the total reimbursement for pharmacist services for high-cost drugs that are
25 reimbursed at a rate that exceeds six hundred dollars (\$600) per dispensing
26 event of the pharmacy providing pharmacist services;

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

29 (c) Provide the National Drug Code that the
30 increase or change is based on to the pharmacy or pharmacist; and

31 (d) Make the change under subdivision
32 (c)(4)(C)(i)(a) of this section effective for each similarly situated
33 pharmacy as defined by the payor subject to the Maximum Allowable Cost List;

34 (ii) If the appeal is denied, provide the
35 challenging pharmacy or pharmacist the National Drug Code and the name of the
36 national or regional pharmaceutical wholesalers operating in Arkansas that

1 have the drug currently in stock at a price below the Maximum Allowable Cost
2 List; or

3 (iii) If the National Drug Code provided by the
4 pharmacy benefits manager is not available below the pharmacy acquisition
5 cost from the pharmaceutical wholesaler from whom the pharmacy or pharmacist
6 purchases the majority of prescription drugs for resale, then the pharmacy
7 benefits manager shall adjust the Maximum Allowable Cost List above the
8 challenging pharmacy's pharmacy acquisition cost plus the professional
9 dispensing fee, as well as an additional five percent (5%) of the total
10 reimbursement for pharmacist services for high-cost drugs that are reimbursed
11 at a rate that exceeds six hundred dollars (\$600) per dispensing event of the
12 pharmacy providing pharmacist services, and permit the pharmacy to reverse
13 and rebill each claim affected by the inability to procure the drug at a cost
14 that is equal to or less than the previously challenged maximum allowable
15 cost.

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17 SECTION 6. Arkansas Code § 17-92-507(e), concerning Maximum Allowable
18 Cost Lists as relating to pharmacists and pharmacies, is amended to read as
19 follows:

20 (e) A pharmacy or pharmacist may decline to provide the pharmacist
21 services to a patient or pharmacy benefits manager if, as a result of a
22 Maximum Allowable Cost List, a pharmacy or pharmacist is to be paid less than
23 the pharmacy acquisition cost, plus a professional dispensing fee, and an
24 additional five percent (5%) of the total reimbursement for pharmacist
25 services for high-cost drugs that are reimbursed at a rate that exceeds six
26 hundred dollars (\$600) per dispensing event of the pharmacy providing
27 pharmacist services.

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29 SECTION 7. Arkansas Code § 23-92-503, concerning the definitions to be
30 used under the Arkansas Pharmacy Benefits Manager Licensure Act, is amended
31 to add additional subdivisions to read as follows:

32 (15)(A) "Professional dispensing fee" means the professional
33 dispensing fee approved by the Centers for Medicare and Medicaid Services for
34 the fee-for-service Arkansas Medicaid Program for preferred brand drugs and
35 generic drugs.

36 (B) "Professional dispensing fee" includes without

1 limitation:

2 (i) Pharmacy costs and expenses related to a
3 pharmacist's:

4 (a) Time spent checking the computer for
5 information about an individual's coverage;

6 (b) Performing drug utilization review and
7 preferred drug list review activities;

8 (c) Measurement or mixing of the covered
9 outpatient drug;

10 (d) Filling the container;

11 (e) Beneficiary counseling;

12 (f) Physically providing the completed
13 prescription to the patient;

14 (g) Delivery of the completed prescription;
15 and

16 (h) Special packaging of the completed
17 precription; and

18 (ii) Overhead associated with maintaining the
19 facility and equipment necessary to operate the pharmacy;

20 (16) "Spread pricing" means the model of prescription drug
21 pricing in which the pharmacy benefits manager charges a health benefit plan
22 a contracted price for prescription drugs, and the contracted price for the
23 prescription drugs differs from the amount the pharmacy benefits manager
24 directly or indirectly pays the pharmacist or pharmacy for pharmacist
25 services; and

26 (17) "Unfair reimbursement for pharmacist services" means a
27 pharmacy benefits manager's or healthcare insurer's directly or indirectly
28 reimbursing a pharmacy or pharmacist for a prescription drug or pharmacist
29 service in an amount less than the current approved fee for the fee-for-
30 service Arkansas Medicaid Program-covered outpatient prescription drug
31 reimbursement that includes an ingredient cost for the prescription drug,
32 plus a professional dispensing fee, and an additional five percent (5%) of
33 the total reimbursement for pharmacist services for high-cost drugs that are
34 reimbursed at a rate that exceeds six hundred dollars (\$600) per dispensing
35 event.

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SECTION 8. Arkansas Code § 23-92-505 is amended to read as follows:
23-92-505. Pharmacy benefits manager network adequacy.

(a) A pharmacy benefits manager shall provide:

(1)(A) A reasonably adequate and accessible pharmacy benefits manager network for the provision of prescription drugs for a health benefit plan that shall provide for convenient patient access to pharmacies within a reasonable distance from a patient’s residence.

(B) A mail-order pharmacy shall not be included in the calculations determining pharmacy benefits manager network adequacy; and

(2) A pharmacy benefits manager network adequacy report describing the pharmacy benefits manager network and the pharmacy benefits manager network’s accessibility in this state in the time and manner required by rule issued by the State Insurance Department.

(b)(1) A pharmacy benefits manager shall report to the Insurance Commissioner on a quarterly basis for each healthcare insurer the following information:

(A) The amount of rebates received by the pharmacy benefits manager;

(B) The amount of rebates distributed to the appropriate healthcare insurer;

(C) The amount paid by the healthcare insurer to the pharmacy benefits manager for pharmacist services itemized by pharmacy, by product, and by goods and services; and

(D) The amount a pharmacy benefits manager paid for pharmacist services itemized by pharmacy, by product, and by goods and services.

(2) The report required under subdivision (b)(1) of this section is:

(A) Proprietary and confidential under § 23-61-107(a)(4) and § 23-61-207; and

(B) Not subject to the Freedom of Information Act of 1967, § 25-19-101 et seq.

(c) A pharmacy benefits manager is prohibited from conducting spread pricing in this state.

SECTION 9. Arkansas Code § 23-92-506(b), concerning prohibited

1 practices for a pharmacy benefits manager under the Arkansas Pharmacy
2 Benefits Manager Licensure Act, is amended to read as follows:

3 (b) A pharmacy benefits manager or representative of a pharmacy
4 benefits manager shall not:

5 (1) Cause or knowingly permit the use of any advertisement,
6 promotion, solicitation, representation, proposal, or offer that is untrue,
7 deceptive, or misleading;

8 (2) Unless reviewed and approved by the commissioner, charge a
9 pharmacist or pharmacy a fee related to the adjudication of a claim,
10 including without limitation a fee for:

11 (A) The receipt and processing of a pharmacy claim;

12 (B) The development or management of claims processing
13 services in a pharmacy benefits manager network; or

14 (C) Participation in a pharmacy benefits manager network;

15 (3) Unless reviewed and approved by the commissioner in
16 coordination with the Arkansas State Board of Pharmacy, require pharmacy
17 accreditation standards or certification requirements inconsistent with, more
18 stringent than, or in addition to requirements of the board;

19 (4)(A) Reimburse a pharmacy or pharmacist in the state an amount
20 less than the amount that the pharmacy benefits manager reimburses a pharmacy
21 benefits manager affiliate for providing the same pharmacist services.

22 (B) The amount shall be calculated on a per-unit basis
23 using the same generic product identifier or generic code number; ~~or~~

24 (5) Pay or reimburse a pharmacy or pharmacist for pharmacist
25 services an amount that is an unfair reimbursement for pharmacist services,
26 unless the pharmacy's or pharmacist's usual and customary charge to the
27 general public is less than the unfair reimbursement for pharmacist services;
28 or

29 (6) Do any combination of the actions listed in ~~subdivisions~~
30 ~~(b)(1)-(4)~~ subdivisions (b)(1)-(5) of this section.

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32 SECTION 10. Arkansas Code § 23-92-507, concerning the prohibition of
33 gag clauses under the Arkansas Pharmacy Benefits Manager Licensure Act, is
34 amended to add an additional subsection to read as follows:

35 (e) Without limiting its application to any other plan or program,
36 this section applies to an organization or entity directly or indirectly

1 providing services to patients under the Medicaid Provider-Led Organized Care
2 Act, § 20-77-2701 et seq., or any other Medicaid managed care program
3 operating in this state.

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5 SECTION 11. Arkansas Code § 23-92-510, concerning the applicability of
6 the Arkansas Pharmacy Benefits Manager Licensure Act, is amended to add an
7 additional subsection to read as follows:

8 (c) Without limiting its application to any other plan or program,
9 this section applies to an organization or entity directly or indirectly
10 providing services to patients under the Medicaid Provider-Led Organized Care
11 Act, § 20-77-2701 et seq. or any other Medicaid managed care program
12 operating in this state.

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14 SECTION 12. EMERGENCY CLAUSE. It is found and determined by the
15 General Assembly of the State of Arkansas that there is confusion about the
16 regulation of pharmacy benefits managers and the enforcement authority of the
17 State Insurance Department; that regulation of pharmacy benefits managers by
18 the State Insurance Department is vital to stabilizing the pharmacy industry
19 in this state; and that this act is immediately necessary because of the need
20 for Arkansas residents to have continued access to pharmacy services across
21 the state. Therefore, an emergency is declared to exist, and this act being
22 immediately necessary for the preservation of the public peace, health, and
23 safety shall become effective on:

24 (1) The date of its approval by the Governor;

25 (2) If the bill is neither approved nor vetoed by the Governor,
26 the expiration of the period of time during which the Governor may veto the
27 bill; or

28 (3) If the bill is vetoed by the Governor and the veto is
29 overridden, the date the last house overrides the veto.

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