

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

1 State of Arkansas As Engrossed: S3/12/19 S3/26/19 S4/1/19 S4/2/19

2 92nd General Assembly

A Bill

3 Regular Session, 2019

SENATE BILL 520

4

5 By: Senators K. Hammer, Caldwell, G. Leding, Maloch, B. Sample

6 By: Representatives M. Gray, Burch, M. Davis, D. Douglas, Eaves, Evans, V. Flowers, Gazaway,

7 Hillman, Jett, Lowery, Lundstrum, Murdock, Pilkington, Vaught, D. Whitaker, *Berry*

8

9

For An Act To Be Entitled

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

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Subtitle

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

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

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

(B) "Maximum Allowable Cost List" includes without



1 limitation:

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

13
 14 SECTION 2. Arkansas Code § 17-92-507(a)(4), concerning the definition
 15 of "pharmacist services" regarding services provided by pharmacists as
 16 relating to pharmacists and pharmacies, is amended to read as follows:

17 (4) "Pharmacist services" means products, goods, ~~or~~ and
 18 services, or any combination of products, goods, and services, provided as a
 19 part of the practice of pharmacy ~~in Arkansas~~ as defined in § 17-92-101;

20
 21 SECTION 3. Arkansas Code § 17-92-507(a), concerning definitions
 22 related to Maximum Allowable Cost Lists, is amended to add additional
 23 subdivisions to read as follows:

24 (10)(A) "Professional dispensing fee" means the professional
 25 dispensing fee approved by the Centers for Medicare and Medicaid Services for
 26 the fee-for-service Arkansas Medicaid Program for preferred brand drugs and
 27 generic drugs.

28 (B) "Professional dispensing fee" includes without
 29 limitation:

30 (i) Pharmacy costs and expenses related to a
 31 pharmacist's:

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

34 (b) Performance of a drug utilization review
 35 and preferred drug list review activities;

36 (c) Measurement or mixing of a covered

1 outpatient drug;

2 (d) Filling the container;

3 (e) Beneficiary counseling;

4 (f) Physically providing the completed
5 prescription to the patient;

6 (g) Delivery of the completed prescription;

7 and

8 (h) Special packaging of the completed
9 prescription; and

10 (ii) Overhead associated with maintaining the
11 facility and equipment necessary to operate the pharmacy.

12 (11)(A) "Unfair reimbursement for pharmacist services" means a
13 pharmacy benefits manager's or healthcare insurer's directly or indirectly
14 reimbursing a pharmacy or pharmacist for a prescription drug or pharmacist
15 service in an amount less than the current approved fee for the fee-for-
16 service Arkansas Medicaid Program-covered outpatient prescription drug
17 reimbursement.

18 (B) "Unfair reimbursement for pharmacist services"
19 includes the combination of the amount of an ingredient cost for the
20 prescription drug plus a professional dispensing fee per dispensing event.

21
22 SECTION 4. Arkansas Code § 17-92-507(b), concerning Maximum Allowable
23 Cost Lists as relating to pharmacists and pharmacies, is amended to read as
24 follows:

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

27 (1) ~~Shall~~ If the drug is a generically equivalent drug as
28 defined in § 17-92-101, shall be listed as therapeutically equivalent and
29 pharmaceutically equivalent "A" or "B" rated in the United States Food and
30 Drug Administration's most recent version of the "Orange Book" or "Green
31 Book" or ~~has~~ have an NR or NA rating by ~~Medi-span~~ Medi-Span, Gold Standard,
32 or a similar rating by a nationally recognized reference;

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

35 (3) Shall not be obsolete.

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

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

8 (a) Not meeting the requirements of this
9 section; or

10 (b) ~~Being below the pharmacy acquisition cost~~
11 an unfair reimbursement for pharmacist services.

12 (ii) The reasonable administrative appeal procedure
13 shall include the following:

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

16 (b) The ability to submit an administrative
17 appeal directly to the pharmacy benefits manager regarding the pharmacy
18 benefits plan or program or through a pharmacy service administrative
19 organization; and

20 (c) No less than ~~seven (7)~~ thirty (30)
21 business days to file an administrative appeal.

22 (B) The pharmacy benefits manager shall respond to the
23 challenge under subdivision (c)(4)(A) of this section within ~~seven (7)~~ thirty
24 (30) business days after receipt of the challenge.

25 (C) If a challenge is under subdivision (c)(4)(A) of this
26 section, the pharmacy benefits manager shall within ~~seven (7)~~ thirty (30)
27 business days after receipt of the challenge either:

28 (i) If the appeal is upheld:

29 (a) Make the change in the maximum allowable
30 cost list payment to at least the amount of unfair reimbursement for
31 pharmacist services;

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

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

36 (d) Make the change under subdivision

1 (c)(4)(C)(i)(a) of this section effective for each similarly situated
 2 pharmacy as defined by the payor subject to the Maximum Allowable Cost List;
 3 (ii) If the appeal is denied, provide the
 4 challenging pharmacy or pharmacist the National Drug Code and the name of the
 5 national or regional pharmaceutical wholesalers operating in Arkansas that
 6 have the drug currently in stock at a price below the Maximum Allowable Cost
 7 List; or

8 (iii) If the National Drug Code provided by the
 9 pharmacy benefits manager is not available below the pharmacy acquisition
 10 cost from the pharmaceutical wholesaler from whom the pharmacy or pharmacist
 11 purchases the majority of prescription drugs for resale, then the pharmacy
 12 benefits manager shall adjust the Maximum Allowable Cost List above the
 13 *challenging pharmacy's ~~pharmacy acquisition cost~~ unfair reimbursement for*
 14 *pharmacist services of the pharmacy providing pharmacist services,* and permit
 15 the pharmacy to reverse and rebill each claim affected by the inability to
 16 procure the drug at a cost that is equal to or less than the previously
 17 challenged maximum allowable cost.

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

22 (e) A pharmacy or pharmacist may decline to provide the pharmacist
 23 services to a patient or pharmacy benefits manager if, as a result of a
 24 Maximum Allowable Cost List, a pharmacy or pharmacist is to be paid less than
 25 *the ~~pharmacy acquisition cost~~ unfair reimbursement for pharmacist services*
 26 *of the pharmacy providing pharmacist services.*

27
 28 SECTION 7. Arkansas Code § 23-92-503(13), concerning the definition of
 29 "rebate" under the Arkansas Pharmacy Benefits Manager Licensure Act, is
 30 amended to read as follows:

31 (13)(A) "Rebate" means a discount or other price concession, or
 32 a payment that is:

33 (i) ~~based~~ Based on utilization of a prescription
 34 drug; and

35 (ii) ~~that is paid~~ Paid by a manufacturer or third
 36 party, directly or indirectly, to a pharmacy benefits manager, pharmacy

1 services administrative organization, or pharmacy after a claim has been
2 processed and paid at a pharmacy.

3 (B) "Rebate" includes without limitation incentives,
4 disbursements, and reasonable estimates of a volume-based discount; and

5
6 SECTION 8. Arkansas Code § 23-92-503, concerning the definitions to be
7 used under the Arkansas Pharmacy Benefits Manager Licensure Act, is amended
8 to add additional subdivisions to read as follows:

9 (15)(A) "Professional dispensing fee" means the professional
10 dispensing fee approved by the Centers for Medicare and Medicaid Services for
11 the fee-for-service Arkansas Medicaid Program for preferred brand drugs and
12 generic drugs.

13 (B) "Professional dispensing fee" includes without
14 limitation:

15 (i) Pharmacy costs and expenses related to a
16 pharmacist's:

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

19 (b) Performing drug utilization review and
20 preferred drug list review activities;

21 (c) Measurement or mixing of the covered
22 outpatient drug;

23 (d) Filling the container;

24 (e) Beneficiary counseling;

25 (f) Physically providing the completed
26 prescription to the patient;

27 (g) Delivery of the completed prescription;

28 and

29 (h) Special packaging of the completed
30 preprescription; and

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

33 (16) "Spread pricing" means the model of prescription drug
34 pricing in which the pharmacy benefits manager charges a health benefit plan
35 a contracted price for prescription drugs, and the contracted price for the
36 prescription drugs differs from the amount the pharmacy benefits manager

1 directly or indirectly pays the pharmacist or pharmacy for pharmacist
2 services; and

3 (17)(A) "Unfair reimbursement for pharmacist services" means a
4 pharmacy benefits manager's or healthcare insurer's directly or indirectly
5 reimbursing a pharmacy or pharmacist for a prescription drug or pharmacist
6 service in an amount less than the current approved fee for the fee-for-
7 service Arkansas Medicaid Program-covered outpatient prescription drug
8 reimbursement.

9 (B) "Unfair reimbursement for pharmacist services"
10 includes the combination of the amount of an ingredient cost for the
11 prescription drug plus a professional dispensing fee per dispensing event.

12

13 SECTION 9. Arkansas Code § 23-92-505 is amended to read as follows:

14 23-92-505. Pharmacy benefits manager network adequacy.

15 (a) A pharmacy benefits manager shall provide:

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

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

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

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

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

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

33 (C) The aggregate amount of rebates passed on to the
34 enrollees of each healthcare insurer at the point of sale that reduced the
35 enrollees applicable deductible, copayment, coinsurance, or other cost-
36 sharing amount;

1 (D) The individual and aggregate amount paid by the
2 healthcare insurer to the pharmacy benefits manager for pharmacist services
3 itemized by pharmacy, by product, and by goods and services; and

4 (E) The individual and aggregate amount a pharmacy
5 benefits manager paid for pharmacist services itemized by pharmacy, by
6 product, and by goods and services.

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

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

11 (B) Not subject to the Freedom of Information Act of 1967,
12 § 25-19-101 et seq.

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

15
16 SECTION 10. Arkansas Code § 23-92-506(b), concerning prohibited
17 practices for a pharmacy benefits manager under the Arkansas Pharmacy
18 Benefits Manager Licensure Act, is amended to read as follows:

19 (b) A pharmacy benefits manager or representative of a pharmacy
20 benefits manager shall not:

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

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

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

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

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

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

35 (4)(A) Reimburse a pharmacy or pharmacist in the state an amount
36 less than the amount that the pharmacy benefits manager reimburses a pharmacy

1 benefits manager affiliate for providing the same pharmacist services.

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

4 (5)(A) Pay or reimburse a pharmacy or pharmacist for pharmacist
5 services an amount that is an unfair reimbursement for pharmacist services,
6 unless the pharmacy's or pharmacist's usual and customary charge to the
7 general public is less than the unfair reimbursement for pharmacist services.

8 (B)(i) The Arkansas Employee Benefits Division community
9 pharmacy reimbursement model for pharmacist services in partnership with the
10 University of Arkansas for Medical Sciences based prescription drug program
11 satisfies the intent of this subdivision.

12 (ii) A plan using the model described in subdivision
13 (b)(5)(B)(i) of this section is exempt from complying with subdivision
14 (b)(5)(A) of this section if the reimbursement model is maintained as
15 determined by the Insurance Commissioner.

16 (iii) If a plan deviates from this reimbursement
17 model, the plan shall be subject to subdivision (b)(5)(A) of this section; or

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

20
21 SECTION 11. Arkansas Code § 23-92-506(c), concerning the denial of
22 claims for pharmacist services, is amended to read as follows:

23 (c) A claim or aggregate of claims for pharmacist services shall not
24 be directly or indirectly retroactively denied or reduced after adjudication
25 of the claim or aggregate of claims unless:

26 (1) The original claim was submitted fraudulently;

27 (2) The original claim payment was incorrect because the
28 pharmacy or pharmacist had already been paid for the pharmacist services; or

29 (3) The pharmacist services were not properly rendered by the
30 pharmacy or pharmacist.

31
32 SECTION 12. 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.

4
5 SECTION 13. 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.

13
14 SECTION 14. 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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31
32 /s/K. Hammer
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