

1 State of Arkansas  
2 94th General Assembly  
3 Regular Session, 2023  
4

# A Bill

SENATE BILL 94

5 By: Senator K. Hammer  
6 By: Representative Achor  
7

## For An Act To Be Entitled

9 AN ACT TO MODIFY THE ARKANSAS PHARMACY BENEFITS  
10 MANAGER LICENSURE ACT; TO AMEND THE DEFINITION OF  
11 "HEALTH BENEFIT PLAN" UNDER THE ARKANSAS PHARMACY  
12 BENEFITS MANAGER LICENSURE ACT; TO REPEAL THE  
13 REQUIREMENT FOR QUARTERLY REPORTS BY A PHARMACY  
14 BENEFITS MANAGER; TO CLARIFY THE AUTHORITY OF THE  
15 INSURANCE COMMISSIONER UNDER THE ARKANSAS PHARMACY  
16 BENEFITS MANAGER LICENSURE ACT; AND FOR OTHER  
17 PURPOSES.  
18

## Subtitle

19  
20  
21 TO MODIFY THE ARKANSAS PHARMACY BENEFITS  
22 MANAGER LICENSURE ACT.  
23  
24

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

27 SECTION 1. Arkansas Code § 23-92-503(2), concerning the definition of  
28 "health benefit plan" used in the Arkansas Pharmacy Benefits Manager  
29 Licensure Act, is amended to read as follows:

30 (2)(A) "Health benefit plan" means any individual, blanket, or  
31 group plan, policy, or contract for healthcare services issued or delivered  
32 by a healthcare payor ~~in~~ to residents of this state.

33 (B) "Health benefit plan" does not include:

- 34 (i) Accident-only plans;
- 35 (ii) Specified disease plans;
- 36 (iii) Disability income plans;



- (iv) Plans that provide only for indemnity for hospital confinement;
- (v) Long-term care only plans that do not include pharmacy benefits;
- (vi) Other limited-benefit health insurance policies or plans; or
- (vii) Health benefit plans provided under Arkansas Constitution, Article 5, § 32, the Workers' Compensation Law, § 11-9-101 et seq., and the Public Employee Workers' Compensation Act, § 21-5-601 et seq.

(C) "Health benefit plan" includes any group plan, policy, or contract for healthcare services issued outside this state that provides benefits to residents of this state;

SECTION 2. Arkansas Code § 23-92-504(b), concerning the rule-making authority of the Insurance Commissioner, is amended to read as follows:

(b)~~(1)~~ The commissioner shall issue rules establishing the licensing, fees, application, financial standards, penalties, compliance and enforcement requirements, and reporting requirements of pharmacy benefits managers under this subchapter.

~~(2)(A) When adopting the initial rules to implement this subchapter, the final rule shall be filed with the Secretary of State for adoption under § 25-15-204(f):~~

~~(i) On or before September 1, 2018; or~~

~~(ii) If approval under § 10-3-309 has not occurred by September 1, 2018, as soon as practicable after approval under § 10-3-309.~~

~~(B) The State Insurance Department shall file the proposed rule with the Legislative Council under § 10-3-309(e) sufficiently in advance of September 1, 2018, so that the Legislative Council may consider the rule for approval before September 1, 2018.~~

SECTION 3. Arkansas Code § 23-92-505(b), concerning the requirement for quarterly reports by a pharmacy benefits manager to the Insurance Commissioner, is amended to read as follows:

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

1                   ~~(A) The aggregate amount of rebates received by the~~  
 2 ~~pharmacy benefits manager;~~

3                   ~~(B) The aggregate amount of rebates distributed to the~~  
 4 ~~appropriate healthcare payor;~~

5                   ~~(C) The aggregate amount of rebates passed on to the~~  
 6 ~~enrollees of each healthcare payor at the point of sale that reduced the~~  
 7 ~~enrollees' applicable deductible, copayment, coinsurance, or other cost-~~  
 8 ~~sharing amount;~~

9                   ~~(D) The individual and aggregate amount paid by the~~  
 10 ~~healthcare payor to the pharmacy benefits manager for pharmacist services~~  
 11 ~~itemized by pharmacy, by product, and by goods and services; and~~

12                   ~~(E) The individual and aggregate amount a pharmacy~~  
 13 ~~benefits manager paid for pharmacist services itemized by pharmacy, by~~  
 14 ~~product, and by goods and services~~ The Insurance Commissioner may examine the  
 15 books and records of a pharmacy benefits manager as necessary to determine:

16                   (A) The aggregate amount of rebates received by a pharmacy  
 17 benefits manager;

18                   (B) The aggregate amount of rebates distributed by a  
 19 pharmacy benefits manager to an appropriate healthcare payor; and

20                   (C) The aggregate amount of rebates passed on to an  
 21 enrollee of each healthcare payor at the point of sale that reduced the  
 22 enrollee's applicable deductible, copayment, coinsurance, or other cost  
 23 sharing amount.

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

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

28                   ~~(B) Not subject to the Freedom of Information Act of 1967,~~  
 29 ~~§ 25-19-101 et seq~~ The commissioner may examine the books and records of a  
 30 pharmacy benefits manager as necessary to determine:

31                   (A) The individual and aggregate amount paid by a  
 32 healthcare payor to the pharmacy benefits manager for pharmacist services  
 33 itemized by pharmacy, product, and goods and services, including other  
 34 prescription drug or device services; and

35                   (B) The individual and aggregate amount a pharmacy  
 36 benefits manager paid for pharmacist services itemized by pharmacy, product,

1 and goods and services, including other prescription drug or device services.

2  
3 SECTION 4. Arkansas Code § 23-92-508 is amended to read as follows:  
4 23-92-508. Enforcement.

5 (a) The Insurance Commissioner shall enforce this subchapter through  
6 any action that the commissioner deems necessary.

7 (b)(1) The commissioner may examine or audit the books and records of  
8 a pharmacy benefits manager providing claims processing services or other  
9 prescription drug or device services for a health benefit plan to determine  
10 if the pharmacy benefits manager is in compliance with this subchapter.

11 (2) The information or data acquired during an examination under  
12 subdivision (b)(1) of this section is:

13 (A) Considered proprietary and confidential under § 23-61-  
14 107(a)(4) and § 23-61-207; and

15 (B) Not subject to the Freedom of Information Act of 1967,  
16 § 25-19-101 et seq.

17 (c) After notice and opportunity for hearing, the commissioner may:

18 (1) Impose a penalty of ten thousand dollars (\$10,000) per  
19 violation against a pharmacy benefits manager if the commissioner finds that  
20 the pharmacy benefits manager has not:

21 (A) Followed the process established for determining  
22 pricing or costs under the Maximum Allowable Cost List under § 17-92-507; or

23 (B) Used the national average drug acquisition cost under  
24 § 23-92-506(b); or

25 (2) Revoke or suspend the license of a pharmacy benefits manager  
26 if the commissioner finds that the pharmacy benefits manager:

27 (A) Has committed a pattern of violations of this  
28 subchapter;

29 (B) Has not followed the process established for  
30 determining pricing and costs under the Maximum Allowable Cost List under §  
31 17-92-507; or

32 (C) Has not used the national average drug acquisition  
33 cost under § 23-92-506(b).

34  
35 SECTION 5. Arkansas Code § 23-92-510, concerning the applicability of  
36 the Arkansas Pharmacy Benefits Manager Licensure Act, is amended to add an

1 additional subsection to read as follows:

2 (d) This subchapter applies to a health benefit plan that is issued  
3 outside this state if that health benefit plan provides benefits for  
4 healthcare services to residents of this state.

5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36