

State of Arkansas
94th General Assembly
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As Engrossed: S2/9/23
A Bill

SENATE BILL 94

By: Senator K. Hammer
By: Representative Achor

For An Act To Be Entitled

AN ACT TO MODIFY THE ARKANSAS PHARMACY BENEFITS
MANAGER LICENSURE ACT; TO AMEND THE DEFINITION OF
"HEALTH BENEFIT PLAN" UNDER THE ARKANSAS PHARMACY
BENEFITS MANAGER LICENSURE ACT; TO REPEAL THE
REQUIREMENT FOR QUARTERLY REPORTS BY A PHARMACY
BENEFITS MANAGER; TO CLARIFY THE AUTHORITY OF THE
INSURANCE COMMISSIONER UNDER THE ARKANSAS PHARMACY
BENEFITS MANAGER LICENSURE ACT; AND FOR OTHER
PURPOSES.

Subtitle

TO MODIFY THE ARKANSAS PHARMACY BENEFITS
MANAGER LICENSURE ACT.

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

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

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

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

- (i) Accident-only plans;
- (ii) Specified disease plans;
- (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(c) 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:~~

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

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

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

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

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

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

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

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

~~(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~~ The commissioner may examine the books and records of a pharmacy benefits manager as necessary to determine:

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

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

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

SECTION 4. Arkansas Code § 23-92-505, concerning the network adequacy of pharmacy benefits managers under the Arkansas Pharmacy Benefits Manager Licensure Act, is amended to add an additional subsection to read as follows:

(d) This section does not limit the power of the commissioner to examine or audit the books and records of a pharmacy benefits manager under this subchapter.

SECTION 5. Arkansas Code § 23-92-508 is amended to read as follows:
23-92-508. Enforcement.

(a) The Insurance Commissioner shall enforce this subchapter.

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

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

(A) Considered 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) After notice and opportunity for hearing, the commissioner may:

(1) Impose a penalty of up to five thousand dollars (\$5,000) per violation against a pharmacy benefits manager if the commissioner finds that the pharmacy benefits manager has not:

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

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

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

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

(B) Has not followed the process established for determining pricing and costs under the Maximum Allowable Cost List under §

17-92-507; or

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

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

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

/s/K. Hammer

APPROVED: 3/16/23