

State of Arkansas
94th General Assembly
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A Bill

HOUSE BILL 1481

By: Representative Achor

By: Senator J. Boyd

For An Act To Be Entitled

AN ACT TO CREATE THE HEALTHCARE INSURER SHARE THE SAVINGS ACT; TO CREATE THE ARKANSAS PHARMACY BENEFITS MANAGER SHARE THE SAVINGS ACT; AND FOR OTHER PURPOSES.

Subtitle

TO CREATE THE HEALTHCARE INSURER SHARE THE SAVINGS ACT; AND TO CREATE THE ARKANSAS PHARMACY BENEFITS MANAGER SHARE THE SAVINGS ACT.

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

SECTION 1. Arkansas Code Title 23, Chapter 79, is amended to add an additional subchapter to read as follows:

Subchapter 24 – Healthcare Insurer Share the Savings Act

23-79-2401. Title.

This subchapter shall be known and may be cited as the "Healthcare Insurer Share the Savings Act".

23-79-2402. Definitions.

As used in this subchapter:

(1) "Defined cost sharing" means a deductible payment or coinsurance amount imposed on an enrollee for a covered prescription drug



under the enrollee's health benefit plan;

(2) "Enrollee" means an individual entitled to coverage of healthcare services from a healthcare insurer;

(3)(A) "Health benefit plan" means any individual, blanket, or group plan, policy, or contract for healthcare services issued or delivered by a healthcare insurer in 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;

(vii) Health benefit plans provided under Arkansas Constitution, Article 5, § 32, the Workers' Compensation Law, § 11-9-101 et seq., or the Public Employee Workers' Compensation Act, § 21-5-601 et seq.;
or

(viii) Any state or local governmental employee plan;

(4)(A) "Healthcare insurer" means a:

(i) Health insurance issuer that:

(a) Is subject to state law regulating insurance; and

(b) Offers health insurance coverage under 42 U.S.C. § 300gg-91, as it existed on January 1, 2023;

(ii) Health maintenance organization; or

(iii) Hospital and medical service corporation.

(B) "Healthcare insurer" does not include an entity that provides only dental benefits or eye and vision care benefits;

(5) "Price protection rebate" means a negotiated price concession that accrues directly or indirectly to a healthcare insurer, or other party on behalf of the healthcare insurer, if there is an increase in the wholesale acquisition cost of a prescription drug above a specified

threshold; and

(6) "Rebate" means:

(A) A negotiated price concession, including without limitation base price concessions, whether described as a rebate or not, reasonable estimates of any price protection rebates, and performance-based price concessions that may accrue, directly or indirectly, to the healthcare insurer during the coverage year from a manufacturer or other party in connection with the dispensing or administration of a prescription drug; and

(B) Any reasonable estimate of a negotiated price concession, fee, and other administrative cost that is passed through, or is reasonably anticipated to be passed through, to the healthcare insurer and serves to reduce the healthcare insurer's liabilities for a prescription drug.

23-79-2403. Implementation of subchapter – Requirements.

(a) An enrollee's defined cost sharing for a prescription drug shall be calculated at the point-of-sale based on a price that is reduced by an amount equal to at least one hundred percent (100%) of all rebates received, or to be received, in connection with the dispensing or administration of the prescription drug.

(b) This subchapter shall not preclude a healthcare insurer from decreasing an enrollee's defined cost sharing by an amount greater than that required under subsection (a) of this section.

(c) In implementing the requirements of this section, the state shall only regulate a healthcare insurer to the extent permissible under applicable law.

(d)(1) In complying with this section, a healthcare insurer or its agents shall not publish or otherwise reveal information regarding the actual amount of rebates a healthcare insurer receives on a product or therapeutic class of products, manufacturer, or pharmacy-specific basis.

(2) The information described in subdivision (d)(1) of this section is:

(A) Protected as a trade secret;

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

(C) Not subject to disclosure under the Freedom of

Information Act of 1967, § 25-19-101 et seq.; and

(D) Not to be disclosed:

(i) Directly or indirectly; or

(ii) In a manner that would:

(a) Allow for the identification of an individual product, therapeutic class of products, or manufacturer; or

(b) Have the potential to compromise the financial, competitive, or proprietary nature of the information.

(3) A healthcare insurer shall impose the confidentiality protections of this section on any vendor or downstream third party that performs healthcare or administrative services on behalf of the healthcare insurer that may receive or have access to rebate information.

SECTION 2. Arkansas Code Title 23, Chapter 92, is amended to add an additional subchapter to read as follows:

Subchapter 7 – Arkansas Pharmacy Benefits Manager Share the Savings Act

23-92-701. Title.

This subchapter shall be known and may be cited as the "Arkansas Pharmacy Benefits Manager Share the Savings Act".

23-92-702. Purpose.

The purpose of this subchapter is to require pharmacy benefits managers to share the benefit of rebates with enrollees in this state.

23-92-703. Definitions.

As used in this subchapter:

(1) "Defined cost sharing" means a deductible payment or coinsurance amount imposed on an enrollee for a covered prescription drug under the enrollee's health benefit plan;

(2) "Enrollee" means an individual entitled to coverage of healthcare services from a healthcare insurer;

(3)(A) "Health benefit plan" means any individual, blanket, or group plan, policy, or contract for healthcare services issued or delivered by a healthcare insurer in 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;
- (vii) Health benefit plans provided under Arkansas Constitution, Article 5, § 32, the Workers' Compensation Law, § 11-9-101 et seq., or the Public Employee Workers' Compensation Act, § 21-5-601 et seq.;
- or
- (viii) Any state or local governmental employee plan;

(4) "Healthcare insurer" means an insurance company that is subject to state law regulating insurance including without limitation a health maintenance organization or a hospital and medical service corporation;

(5) "Pharmacy benefits management service" means a service to:

- (A) Negotiate the price of prescription drugs, including negotiating and contracting for direct or indirect rebates, discounts, or other price concessions;

- (B) Manage any aspect of a prescription drug benefit, including without limitation:
 - (i) Claims processing services;
 - (ii) The performance of drug utilization review;
 - (iii) The processing of drug prior authorization requests;
 - (iv) The adjudication of appeals or grievances related to a prescription drug benefit;
 - (v) Controlling the cost of covered prescription drugs; or
 - (vi) The provision of services related to the services described under this subdivision (5)(B);

(C) Disburse or distribute rebates, manage or participate in incentive programs or arrangements for pharmacist services, negotiate or enter into contractual arrangements with pharmacists or pharmacies, or both, develop formularies, or employ advertising or promotional services;

(D) Perform any other administrative, managerial, clinical, pricing, financial, reimbursement, or billing service; and

(E) Perform any other services as the Insurance Commissioner may include by rule;

(6)(A) "Pharmacy benefits manager" means a person, business, or entity that, pursuant to a written agreement with a healthcare insurer or health benefit plan, either directly or indirectly provides one (1) or more pharmacy benefits management services on behalf of the healthcare insurer or health benefit plan, and any agent, contractor, intermediary, affiliate, subsidiary, or related entity of the person, business, or entity that facilitates, provides, directs, or oversees the provision of the pharmacy benefits management service or services.

(B) "Pharmacy benefits manager" does not include a:

(i) Healthcare facility licensed in Arkansas;

(ii) Healthcare professional licensed in Arkansas;

or

(iii) Consultant who only provides advice as to the selection or performance of a pharmacy benefits manager;

(7) "Price protection rebate" means a negotiated price concession that accrues directly or indirectly to a healthcare insurer, or other party on behalf of the healthcare insurer, if there is an increase in the wholesale acquisition cost of a prescription drug above a specified threshold; and

(8) "Rebate" means:

(A) A negotiated price concession including without limitation base price concessions, whether described as a rebate or not, reasonable estimates of any price protection rebates, and performance-based price concessions that may accrue, directly or indirectly, to the healthcare insurer during the coverage year from a manufacturer or other party in connection with the dispensing or administration of a prescription drug; and

(B) Any reasonable estimate of a negotiated price concession, fee, and other administrative cost that is passed through, or is

reasonably anticipated to be passed through, to the healthcare insurer and serves to reduce the healthcare insurer's liabilities for a prescription drug.

23-92-704. Implementation of subchapter – Requirements.

(a) An enrollee's defined cost sharing for a prescription drug shall be calculated at the point-of-sale based on a price that is reduced by an amount equal to at least one hundred percent (100%) of all rebates received, or to be received, in connection with the dispensing or administration of the prescription drug.

(b) This subchapter shall not preclude a pharmacy benefits manager from decreasing an enrollee's defined cost sharing by an amount greater than that required under subsection (a) of this section.

(c)(1) A pharmacy benefits manager shall submit a certification to the Insurance Commissioner by January 1 of each calendar year certifying that the pharmacy benefits manager has complied with the requirements of this section during the previous calendar year.

(2) The certification under subdivision (c)(1) of this section shall be signed by the chief executive officer or chief financial officer of the pharmacy benefits manager.

(3) The form of the certification shall:

(A) Be in a format approved or established by the commissioner; and

(B) Include the pharmacy benefits manager's best estimate of the aggregate amount of rebates used to reduce enrollee-defined cost sharing for prescription drugs in the previous calendar year based on information known to the pharmacy benefits manager as of the date of the certification.

(d)(1) In complying with this section, a pharmacy benefits manager or its agents shall not publish or otherwise reveal information regarding the actual amount of rebates a pharmacy benefits manager receives on a product or therapeutic class of products, manufacturer, or pharmacy-specific basis.

(2) The information described in subdivision (d)(1) of this section is:

(A) Protected as a trade secret;

(B) Considered proprietary and confidential under § 23-61-

107(a)(4) and § 23-61-207;

(C) Not subject to disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq.; and

(D) Not to be disclosed:

(i) Directly or indirectly; or

(ii) In a manner that would:

(a) Allow for the identification of an individual product, therapeutic class of products, or manufacturer; or

(b) Have the potential to compromise the financial, competitive, or proprietary nature of the information.

(3) A pharmacy benefits manager shall impose the confidentiality protections of this section on any vendor or downstream third party that performs healthcare services or administrative services on behalf of the pharmacy benefits manager that may receive or have access to rebate information.

SECTION 3. DO NOT CODIFY. Severability.

(a) In implementing this act, the state shall regulate a health benefit plan, healthcare insurer, or pharmacy benefits manager only to the extent permissible under applicable law.

(b)(1) The provisions of this act are severable.

(2) The invalidity of any provision of this act shall not affect other provisions of this act that can be given effect without the invalid provision.

APPROVED: 3/21/23