

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

State of Arkansas
89th General Assembly
Regular Session, 2013

As Engrossed: S3/28/13
A Bill

SENATE BILL 1138

By: Senator Caldwell

For An Act To Be Entitled

AN ACT TO PROVIDE FOR THE TRANSPARENCY OF MAXIMUM
ALLOWABLE COST LISTS FOR PRESCRIPTION DRUGS; AND FOR
OTHER PURPOSES.

Subtitle

TO REGULATE PHARMACY BENEFITS MANAGERS'
MAINTENANCE AND USE OF MAXIMUM ALLOWABLE
COST LISTS FOR PRESCRIPTION DRUGS.

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

SECTION 1. Arkansas Code Title 17, Chapter 92, Subchapter 5, is amended to add an additional section to read as follows:

17-92-507. Maximum Allowable Cost Lists.

(a) As used in this section:

(1) "Maximum Allowable Cost List" means a listing of drugs used by a pharmacy benefits manager setting the maximum allowable cost on which reimbursement to a pharmacy or pharmacist may be based;

(2) "Pharmacy benefits manager" means an entity that administers or manages a pharmacy benefits plan or program;

(3) "Pharmacy benefits plan or program" means a plan or program that pays for, reimburses, covers the cost of, or otherwise provides for pharmacist services to individuals who reside in or are employed in this state;

(4) "Pharmacist" means a licensed pharmacist as defined in § 17-92-101;

(5) "Pharmacy" means the same as in § 17-92-101; and



(6) "Pharmacist services" means products, goods, or services provided as a part of the practice of pharmacy in Arkansas.

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

(1) Shall be listed as therapeutically equivalent and pharmaceutically equivalent "A" or "B" rated in the United States Food and Drug Administration's most recent version of the "Orange Book" or "Green Book" or has an NR or NA rating by Medispan or a similar rating by a nationally recognized reference;

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

(3) Shall not be obsolete.

(c) A pharmacy benefits manager shall:

(1) Provide access to its Maximum Allowable Cost List to each pharmacy subject to the Maximum Allowable Cost List;

(2) Update its Maximum Allowable Cost List on a timely basis, but in no event longer than seven (7) calendar days from a change in the methodology on which the Maximum Allowable Cost List is based or in the value of a variable involved in the methodology;

(3) Provide a process for each pharmacy subject to the Maximum Allowable Cost List to receive prompt notification of an update to the Maximum Allowable Cost List; and

(4)(A) Within three (3) business days after the applicable fill date, provide a reasonable administrative appeal procedure to allow pharmacies to challenge maximum allowable costs for a specific drug or drugs as:

(i) Not meeting the requirements of this section; or

(ii) Being below the cost at which the pharmacy may obtain the drug.

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

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

(i) If the appeal is upheld:

(a) Make the change in the maximum allowable cost;

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

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

(ii) If the appeal is denied, provide the challenging pharmacy or pharmacist the National Drug Code number from national or regional wholesalers operating in Arkansas.

(d) This section does not apply to a Maximum Allowable Cost List maintained by the Medicaid program.

(e) A violation of this section is a deceptive and unconscionable trade practice under § 4-88-101 et seq.

/s/Caldwell