

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

State of Arkansas
90th General Assembly
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As Engrossed: S3/12/15
A Bill

SENATE BILL 688

By: Senators Caldwell, Maloch, G. Stubblefield
By: Representatives M. Gray, Vaught, Eubanks, Bragg

For An Act To Be Entitled

AN ACT TO AMEND THE LAWS REGARDING MAXIMUM ALLOWABLE COST LISTS; TO CREATE ACCOUNTABILITY IN THE ESTABLISHMENT OF PRESCRIPTION DRUG PRICING; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE LAWS REGARDING MAXIMUM ALLOWABLE COST LISTS; AND TO CREATE ACCOUNTABILITY IN THE ESTABLISHMENT OF PRESCRIPTION DRUG PRICING.

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

SECTION 1. Arkansas Code § 17-92-507 is amended 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) "Pharmaceutical wholesaler" means a person or entity that sells and distributes prescription pharmaceutical products, including without limitation a full line of brand-name, generic, and over-the-counter pharmaceuticals, and that offers regular and private delivery to a pharmacy;

~~(2)(3)~~ "Pharmacist" means a licensed pharmacist as defined in § 17-92-101;

~~(3)(4)~~ "Pharmacist services" means products, goods, or services



provided as a part of the practice of pharmacy in Arkansas;

~~(4)~~(5) "Pharmacy" means the same as in § 17-92-101;

~~(5)~~(6) "Pharmacy acquisition cost" means the amount that a pharmaceutical wholesaler charges for a pharmaceutical product as listed on the pharmacy's billing invoice;

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

(8) "Pharmacy benefits manager affiliate" means a pharmacy or pharmacist that directly or indirectly, through one (1) or more intermediaries owns or controls, is owned or controlled by, or is under common ownership or control with a pharmacy benefits manager; and

~~(6)~~(9) "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.

(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 *Medi-spanTM*, *Gold Standard*, 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~~, 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 an increase of ten percent (10%) or more in the pharmacy acquisition cost from sixty percent (60%) or more of the pharmaceutical wholesaler doing business in the state or 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)(i) ~~Within three (3) business days after the applicable fill date, provide~~ Provide a reasonable administrative appeal procedure to allow pharmacies to challenge *maximum allowable costs and reimbursements made under a maximum allowable cost* for a specific drug or drugs as:

~~(i)(a)~~ (a) Not meeting the requirements of this section;

or

~~(ii)(b)~~ *Being below the cost at which the pharmacy may obtain the drug pharmacy acquisition cost.*

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

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

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

(c) No less than seven (7) business days to file an administrative appeal.

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

~~(e)(d)~~ (d) 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;

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(ii) If the appeal is denied, provide the challenging pharmacy or pharmacist the National Drug Code number ~~from~~ and the name of the national or regional pharmaceutical wholesalers operating in Arkansas that have the drug currently in stock at a price below the Maximum Allowable Cost List; or

(iii) If the National Drug Code number provided by the pharmacy benefits manager is not available below the pharmacy acquisition cost from the pharmaceutical wholesaler from whom the pharmacy or pharmacist purchases the majority of prescription drugs for resale, then the pharmacy benefits manager shall adjust the Maximum Allowable Cost List above the challenging pharmacy's pharmacy acquisition cost and permit the pharmacy to reverse and rebill each claim affected by the inability to procure the drug at a cost that is equal to or less than the previously challenged maximum allowable cost.

(d)(1) A pharmacy benefits manager shall not reimburse a pharmacy or pharmacist in the state an amount less than the amount that the pharmacy benefits manager reimburses a pharmacy benefits manager affiliate for providing the same pharmacist services.

(2) The amount shall be calculated on a per unit basis based on the same generic product identifier or generic code number.

(e) A pharmacy or pharmacist may decline to provide the pharmacist services to a patient or pharmacy benefits manager if, as a result of a Maximum Allowable Cost List, a pharmacy or pharmacist is to be paid less than the pharmacy acquisition cost of the pharmacy providing pharmacist services.

(f)(1) This section does not apply to a Maximum Allowable Cost List maintained by the Arkansas Medicaid Program or the Employee Benefits Division of the Department of Finance and Administration.

(2) This section shall apply to the pharmacy benefits manager employed by the Arkansas Medicaid Program or the Employee Benefits Division if, at any time, the Arkansas Medicaid Program or the Employee Benefits Division engages the services of a pharmacy benefits manager to maintain a Maximum Allowable Cost List.

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

/s/Caldwell