

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

State of Arkansas As Engrossed: S3/12/19 S3/26/19 S4/1/19 S4/2/19 S4/4/19

92nd General Assembly

# A Bill

Regular Session, 2019

SENATE BILL 520

By: Senators K. Hammer, Caldwell, G. Leding, Maloch, B. Sample

By: Representatives M. Gray, Burch, M. Davis, D. Douglas, Eaves, Evans, V. Flowers, Gazaway,

Hillman, Jett, Lowery, Lundstrum, Murdock, Pilkington, Vaught, D. Whitaker, *Berry*

## For An Act To Be Entitled

*AN ACT TO CLARIFY THE STATE INSURANCE DEPARTMENT'S  
REGULATORY AND ENFORCEMENT AUTHORITY CONCERNING  
PHARMACY BENEFITS MANAGERS; TO MODIFY THE ARKANSAS  
PHARMACY BENEFITS MANAGER LICENSURE ACT; AND FOR  
OTHER PURPOSES*

## Subtitle

*TO CLARIFY THE STATE INSURANCE  
DEPARTMENT'S REGULATORY AND ENFORCEMENT  
AUTHORITY CONCERNING PHARMACY BENEFITS  
MANAGERS; AND 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 § 17-92-507(a)(1), concerning the definition of "Maximum Allowable Cost List" regarding Maximum Allowable Cost Lists as relating to pharmacists and pharmacies, is amended to read as follows:

(1)(A) "Maximum Allowable Cost List" means a listing of drugs or other methodology used by a pharmacy benefits manager, directly or indirectly, setting the maximum allowable ~~cost on which reimbursement payment~~ payment to a pharmacy or pharmacist may be based for a generic drug, brand-name drug, biologic product, or other prescription drug.

(B) "Maximum Allowable Cost List" includes without limitation:



(i) Average acquisition cost, including national average drug acquisition cost;  
(ii) Average manufacturer price;  
(iii) Average wholesale price;  
(iv) Brand effective rate or generic effective rate;  
(v) Discount indexing;  
(vi) Federal upper limits;  
(vii) Wholesale acquisition cost; and  
(viii) Any other term that a pharmacy benefits manager or a healthcare insurer may use to establish reimbursement rates to a pharmacist or pharmacy for pharmacist services;

SECTION 2. Arkansas Code § 17-92-507(a)(4), concerning the definition of "pharmacist services" regarding services provided by pharmacists as relating to pharmacists and pharmacies, is amended to read as follows:

(4) "Pharmacist services" means products, goods, ~~or~~ and services, or any combination of products, goods, and services, provided as a part of the practice of pharmacy ~~in Arkansas~~ as defined in § 17-92-101;

SECTION 3. Arkansas Code § 17-92-507(b), concerning Maximum Allowable Cost Lists as relating to pharmacists and pharmacies, is amended to read as follows:

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

(1) ~~Shall~~ If the drug is a generically equivalent drug as defined in § 17-92-101, 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~~ have an NR or NA rating by ~~Medi-span~~ Medi-Span, 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; and

(3) Shall not be obsolete.

SECTION 4. Arkansas Code § 17-92-507(c)(4), concerning Maximum Allowable Cost Lists as relating to pharmacists and pharmacies, is amended to

read as follows:

(4)(A)(i) Provide a reasonable administrative appeal procedure to allow pharmacies to challenge maximum allowable ~~costs~~ cost list and reimbursements made under a maximum allowable cost list for a specific drug or drugs as:

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

(b) *Being below the pharmacy acquisition cost.*

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

(a) A dedicated telephone number, ~~and~~ email address, and ~~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)~~ thirty (30) business days to file an administrative appeal.

(B) The pharmacy benefits manager shall respond to the challenge under subdivision (c)(4)(A) of this section within ~~seven (7)~~ thirty (30) business days after receipt of the challenge.

(C) If a challenge is under subdivision (c)(4)(A) of this section, the pharmacy benefits manager shall within ~~seven (7)~~ thirty (30) business days after receipt of the challenge either:

(i) If the appeal is upheld:

(a) Make the change in the maximum allowable cost list payment to at least the pharmacy acquisition cost;

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

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

(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;

(ii) If the appeal is denied, provide the challenging pharmacy or pharmacist the National Drug Code 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 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.

SECTION 5. Arkansas Code § 17-92-507(e), concerning Maximum Allowable Cost Lists as relating to pharmacists and pharmacies, is amended to read as follows:

(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.*

SECTION 6. Arkansas Code § 23-92-503(13), concerning the definition of "rebate" under the Arkansas Pharmacy Benefits Manager Licensure Act, is amended to read as follows:

(13)(A) "Rebate" means a discount or other price concession, or a payment that is:

(i) ~~based~~ Based on utilization of a prescription drug; and

(ii) ~~that is paid~~ Paid by a manufacturer or third party, directly or indirectly, to a pharmacy benefits manager, pharmacy services administrative organization, or pharmacy after a claim has been processed and paid at a pharmacy.

(B) "Rebate" includes without limitation incentives, disbursements, and reasonable estimates of a volume-based discount; and

SECTION 7. Arkansas Code § 23-92-503, concerning the definitions to be

used under the Arkansas Pharmacy Benefits Manager Licensure Act, is amended to add an additional subdivision to read as follows:

(15) "Spread pricing" means the model of prescription drug pricing in which the pharmacy benefits manager charges a health benefit plan a contracted price for prescription drugs, and the contracted price for the prescription drugs differs from the amount the pharmacy benefits manager directly or indirectly pays the pharmacist or pharmacy for pharmacist services.

SECTION 8. Arkansas Code § 23-92-505 is amended to read as follows:

23-92-505. Pharmacy benefits manager network adequacy.

(a) A pharmacy benefits manager shall provide:

(1)(A) A reasonably adequate and accessible pharmacy benefits manager network for the provision of prescription drugs for a health benefit plan that shall provide for convenient patient access to pharmacies within a reasonable distance from a patient's residence.

(B) A mail-order pharmacy shall not be included in the calculations determining pharmacy benefits manager network adequacy; and

(2) A pharmacy benefits manager network adequacy report describing the pharmacy benefits manager network and the pharmacy benefits manager network's accessibility in this state in the time and manner required by rule issued by the State Insurance Department.

(b)(1) A pharmacy benefits manager shall report to the Insurance Commissioner on a quarterly basis for each healthcare insurer 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 insurer;

(C) The aggregate amount of rebates passed on to the enrollees of each healthcare insurer 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 insurer 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.

(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.

(c) A pharmacy benefits manager is prohibited from conducting spread pricing in this state.

SECTION 9. Arkansas Code § 23-92-506(b), concerning prohibited practices for a pharmacy benefits manager under the Arkansas Pharmacy Benefits Manager Licensure Act, is amended to read as follows:

(b) A pharmacy benefits manager or representative of a pharmacy benefits manager shall not:

(1) Cause or knowingly permit the use of any advertisement, promotion, solicitation, representation, proposal, or offer that is untrue, deceptive, or misleading;

(2) Unless reviewed and approved by the commissioner, charge a pharmacist or pharmacy a fee related to the adjudication of a claim, including without limitation a fee for:

(A) The receipt and processing of a pharmacy claim;

(B) The development or management of claims processing services in a pharmacy benefits manager network; or

(C) Participation in a pharmacy benefits manager network;

(3) Unless reviewed and approved by the commissioner in coordination with the Arkansas State Board of Pharmacy, require pharmacy accreditation standards or certification requirements inconsistent with, more stringent than, or in addition to requirements of the board;

(4)(A) 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.

(B) The amount shall be calculated on a per-unit basis using the same generic product identifier or generic code number; ~~or~~

(5)(A) Pay or reimburse a pharmacy or pharmacist for the ingredient drug product component of pharmacist services less than the national average drug acquisition cost or, if the national average drug acquisition cost is unavailable, the wholesale acquisition cost.

(B)(i) The Arkansas Employee Benefits Division community pharmacy reimbursement model for pharmacist services in partnership with the University of Arkansas for Medical Sciences based prescription drug program satisfies the intent of this subdivision.

(ii) A plan using the model described in subdivision (b)(5)(B)(i) of this section is exempt from complying with subdivision (b)(5)(A) of this section if the reimbursement model is maintained as determined by the Insurance Commissioner.

(iii) If a plan deviates from this reimbursement model, the plan shall be subject to subdivision (b)(5)(A) of this section;

(6) Make or permit any reduction of payment for pharmacist services by a pharmacy benefits manager or a healthcare insurer directly or indirectly to a pharmacy under a reconciliation process to an effective rate of reimbursement, including without limitation generic effective rates, brand effective rates, direct and indirect remuneration fees, or any other reduction or aggregate reduction of payment; or

(7) Do any combination of the actions listed in subdivisions ~~(b)(1)~~—(4) (b)(1)-(6) of this section.

SECTION 10. Arkansas Code § 23-92-506(c), concerning the denial of claims for pharmacist services, is amended to read as follows:

(c) A claim or aggregate of claims for pharmacist services shall not be directly or indirectly retroactively denied or reduced after adjudication of the claim or aggregate of claims unless:

- (1) The original claim was submitted fraudulently;
- (2) The original claim payment was incorrect because the pharmacy or pharmacist had already been paid for the pharmacist services; or
- (3) The pharmacist services were not properly rendered by the pharmacy or pharmacist.

SECTION 11. Arkansas Code § 23-92-507, concerning the prohibition of gag clauses under the Arkansas Pharmacy Benefits Manager Licensure Act, is

amended to add an additional subsection to read as follows:

(e) Without limiting its application to any other plan or program, this section applies to an organization or entity directly or indirectly providing services to patients under the Medicaid Provider-Led Organized Care Act, § 20-77-2701 et seq., or any other Medicaid managed care program operating in this state.

SECTION 12. 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:

(c) Without limiting its application to any other plan or program, this section applies to an organization or entity directly or indirectly providing services to patients under the Medicaid Provider-Led Organized Care Act, § 20-77-2701 et seq. or any other Medicaid managed care program operating in this state.

*/s/K. Hammer*