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

State of Arkansas *As Engrossed: H3/4/21 H3/15/21 S4/13/21*
93rd General Assembly **A Bill**
Regular Session, 2021 HOUSE BILL 1569

By: Representatives Lundstrum, Barker, Boyd, Bragg, Brown, C. Cooper, Evans, Furman, D. Garner, Gazaway, Haak, Hawks, Lowery, Maddox, Murdock, Penzo, Pilkington, Ray, Scott, S. Smith, Watson, D. Whitaker, Wing, Wooten, *C. Fite, V. Flowers, McCullough, Rye*
By: Senators Rapert, L. Chesterfield, Gilmore, M. Johnson, Teague, *T. Garner*

For An Act To Be Entitled

AN ACT TO ESTABLISH THE ARKANSAS FAIRNESS IN COST SHARING ACT; AND FOR OTHER PURPOSES.

Subtitle

TO ESTABLISH THE ARKANSAS FAIRNESS IN COST SHARING ACT.

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

SECTION 1. TEMPORARY LANGUAGE. DO NOT CODIFY. Legislative findings and intent.

(a) The General Assembly finds that:

(1) Arkansans frequently rely on state-regulated commercial insurers to secure access to the prescription drugs needed to protect their health;

(2) Commercial insurance designs increasingly require a patient to bear significant out-of-pocket costs for the patient's prescription drugs;

(3) High out-of-pocket costs on prescription drugs affect the ability of patients to start new and necessary prescription drugs and to adhere to their current prescription drugs regimen;

(4) High or unpredictable cost-sharing requirements are a main driver of elevated out-of-pocket costs for patients and allow insurers to capture and divert rebates, discounts, and price concessions that are intended to benefit patients at the pharmacy counter;

(5) Insurers unfairly increase cost-sharing burdens on patients by refusing to count third-party assistance toward a patient's cost-sharing contributions;

(6) The burdens of high or unpredictable cost-sharing requirements are borne disproportionately by patients with chronic or debilitating medical conditions;

(7) It is necessary to restrict the ability of insurers and their intermediaries to use unfair cost-sharing design to retain rebates, discounts, and price concessions that instead should be directly passed on to patients as cost savings at the point of sale of prescription drugs; and

(8) Patients need equitable and accessible health coverage that does not impose unfair cost-sharing burdens upon them.

(b) It is the intent of the General Assembly to ensure that a state-regulated insurer and the entities that contract with the state-regulated insurer do not restrict patient access to prescription drugs by refusing to count third-party cost-sharing assistance toward a patient's cost-sharing obligations, a practice that is detrimental to the consumer.

SECTION 2. Arkansas Code Title 23, Chapter 79, is amended to add an additional subchapter to read as follows:

Subchapter 21 — Arkansas Fairness in Cost Sharing Act

23-79-2101. Title.

This subchapter shall be known and may be cited as the "Arkansas Fairness in Cost Sharing Act".

23-79-2102. Definitions.

As used in this subchapter:

(1) "Cost-sharing requirement" means a copayment, coinsurance, deductible, or annual limitation on cost sharing, including without limitation a limitation subject to the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, that is required by or on behalf of an enrollee in order to receive a specific healthcare service, including a prescription drug, covered by a health benefit plan;

(2) "Enrollee" means an individual entitled to 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., and the Public Employee Workers' Compensation Act, § 21-5-601 et seq.;*

(viii) A plan that provides only dental benefits or eye and vision care benefits; or

(ix) A program or plan authorized and funded under 42 U.S.C. § 1396a et seq.;

(4)(A) "Healthcare insurer" means an insurance company that is subject to state law regulating insurance and offers health insurance coverage under 42 U.S.C. § 300gg-91, as it existed on January 1, 2021, a health maintenance organization, or a 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) "Healthcare service" means an item or service provided to an individual for the purpose of preventing, alleviating, curing, or healing illness, injury, or physical disability; and

(6) "Person" means a natural person, corporation, mutual company, unincorporated association, partnership, joint venture, limited liability company, trust, estate, foundation, not-for-profit corporation, unincorporated organization, government, or governmental subdivision or agency.

23-79-2103. Fairness in cost sharing.

(a)(1) When calculating an enrollee's contribution to any applicable cost-sharing requirement, a healthcare insurer shall include any cost-sharing amounts paid by the enrollee or on behalf of the enrollee by another person.

(2) The cost-sharing requirement under subdivision (a)(1) of this section does not apply for cost-sharing of a prescription drug if a name-brand prescription drug is prescribed and the prescribed drug:

(A) Is not considered to be medically necessary by the prescriber; and

(B) Has a medically appropriate generic prescription drug equivalent.

(b)(1) Except as provided in subdivision (b)(2) of this section, this section applies to a health benefit plan that is entered into, amended, extended, or renewed on or after January 1, 2022.

(2)(A) Benefits offered through a health benefit plan under the Evidenced-Based Prescription Drug Program of the College of Pharmacy of the University of Arkansas Medical Sciences shall satisfy the requirements of this act beginning on and after January 1, 2024, if the Insurance Commissioner reports a failure to comply with this section to the Legislative Council.

(B)(i) Beginning on January 1, 2022, the Director of the Evidenced-Based Prescription Drug Program of the College of Pharmacy of the University of Arkansas Medical Sciences shall report quarterly to the commissioner, Arkansas Legislative Audit, and the Legislative Council concerning details of plan savings and how the process that is used benefits an enrollee and the offered plan.

(ii) The report described in subdivision (b)(2)(B)(i) of this section shall include the amount of enrollee savings, plan-specific data on the amount of manufacturer rebates received, and how the manufacturer rebates were applied in each plan for which the program is contracted to administer a prescription drug benefit.

(c) The General Assembly intends for this section to regulate a healthcare insurer only to the extent permissible under applicable law.

23-79-2104. Rules

(a) The Insurance Commissioner shall promulgate rules necessary to

carry out this subchapter.

(b) The rules promulgated under this section shall require a healthcare insurer and the Director of the Evidenced-Based Prescription Drug Program of the College of Pharmacy of the University of Arkansas Medical Sciences to submit to the commissioner plan-specific information related to savings and accountability to document how enrollees are realizing a cost savings under each plan.

SECTION 3. Arkansas Code Title 23, Chapter 92, Subchapter 5, is amended to add an additional section to read as follows:

23-92-511. Fairness in cost sharing — Definitions.

(a) As used in this section:

(1) "Cost-sharing requirement" means a copayment, coinsurance, deductible, or annual limitation on cost sharing, including without limitation a limitation subject to the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, that is required by or on behalf of an enrollee in order to receive a specific healthcare service, including a prescription drug, covered by a health benefit plan;

(2) "Enrollee" means an individual entitled to 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., and the Public Employee Workers' Compensation Act, § 21-5-601 et seq.;

(viii) A plan that provides only dental benefits or eye and vision care benefits; or

(ix) A program or plan authorized and funded under 42 U.S.C. § 1396a et seq.;

(4)(A) "Healthcare insurer" means an insurance company that is subject to state law regulating insurance and offers health insurance coverage under 42 U.S.C. § 300gg-91, as it existed on January 1, 2021, a health maintenance organization, or a 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) "Healthcare service" means an item or service provided to an individual for the purpose of preventing, alleviating, curing, or healing human illness, injury, or physical disability; and

(6) "Person" means a natural person, corporation, mutual company, unincorporated association, partnership, joint venture, limited liability company, trust, estate, foundation, not-for-profit corporation, unincorporated organization, government, or governmental subdivision or agency.

(b)(1) When calculating an enrollee's contribution to any applicable cost-sharing requirement, a healthcare insurer shall include any cost-sharing amounts paid by the enrollee or on behalf of the enrollee by another person.

(2) The cost-sharing requirement under subdivision (b)(1) of this section does not apply for cost-sharing of a prescription drug if a name-brand prescription drug is prescribed and the prescribed drug:

(A) Is not considered to be medically necessary by the prescriber; and

(B) Has a medically appropriate generic prescription drug equivalent. (c)(1) Except as provided in subdivision (c)(2) of this section, this section applies to a health benefit plan that is entered into, amended, extended, or renewed on or after January 1, 2022.

(2)(A) Benefits offered through a health benefit plan under the Evidenced-Based Prescription Drug Program of the College of Pharmacy of the University of Arkansas Medical Sciences shall satisfy the requirements of this act beginning on and after January 1, 2024, if the Insurance Commissioner reports a failure to comply with this section to the Legislative

Council.

(B)(i) Beginning on January 1, 2022, the Director of the Evidenced-Based Prescription Drug Program of the College of Pharmacy of the University of Arkansas Medical Sciences shall report quarterly to the commissioner, Arkansas Legislative Audit, and the Legislative Council concerning details of plan savings and how the process that is used benefits an enrollee and the offered plan.

(ii) The report described in subdivision (c)(2)(B)(i) of this section shall include the amount of enrollee savings, plan-specific data on the amount of manufacturer rebates received, and how the manufacturer rebates were applied in each plan for which the program is contracted to administer a prescription drug benefit.

(d)(1) The commissioner shall promulgate rules necessary to carry out this section.

(2) The rules promulgated under this section shall require a healthcare insurer and the director to submit plan-specific information related to savings and accountability to document how enrollees are realizing a cost savings under each plan.

(e) The General Assembly intends for this section to regulate a healthcare insurer only to the extent permissible under applicable law.

SECTION 4. TEMPORARY LANGUAGE. DO NOT CODIFY. Rules.

(a) The Insurance Commissioner shall promulgate rules necessary to implement this act.

(b)(1) When adopting the initial rules to implement this act, the final rule shall be filed with the Secretary of State for adoption under § 25-15-204(f):

(A) On or before January 1, 2022; or

(B) If approval under § 10-3-309 has not occurred by January 1, 2022, as soon as practicable after approval under § 10-3-309.

(2) The commissioner shall file the proposed rule with the Legislative Council under § 10-3-309(c) sufficiently in advance of January 1, 2022, so that the Legislative Council may consider the rule for approval before January 1, 2022.

/s/Lundstrum