

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

State of Arkansas
95th General Assembly
Regular Session, 2025

As Engrossed: S3/17/25

A Bill

SENATE BILL 103

By: Senators C. Penzo, *Irvin, M. Johnson*

By: Representative Lundstrum

For An Act To Be Entitled

AN ACT CONCERNING THE STATE'S ANY WILLING PROVIDER LAWS; TO AMEND THE PATIENT PROTECTION ACT OF 1995; TO CREATE THE PHARMACY NONDISCRIMINATION ACT; TO REQUIRE PHARMACY BENEFITS MANAGERS TO ACCEPT ANY PHARMACY OR PHARMACIST WILLING TO ACCEPT RELEVANT AND REASONABLE TERMS OF PARTICIPATION; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

TO CREATE THE PHARMACY NONDISCRIMINATION ACT; TO REQUIRE PHARMACY BENEFITS MANAGERS TO ACCEPT ANY PHARMACY OR PHARMACIST WILLING TO ACCEPT RELEVANT AND REASONABLE TERMS OF PARTICIPATION; AND TO DECLARE AN EMERGENCY.

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

SECTION 1. DO NOT CODIFY. Title. This act shall be known and may be cited as the "Pharmacy Nondiscrimination Act".

SECTION 2. DO NOT CODIFY. Legislative findings and intent.

(a) The General Assembly finds that:

(1) The state's any willing provider laws under §§ 23-99-204 – 23-99-210 ensure fair access to healthcare providers, fostering competition and consumer choice;

(2) Pharmacy benefits managers play a key role in the delivery



and management of pharmacy benefits; and

(3) Practices that exclude qualified pharmacies or pharmacists without reasonable justification could restrict competition and limit patient access.

(b) It is the intent of the General Assembly that this act shall clarify and update the principles of the state's any willing provider laws applicable to pharmacy benefits managers to ensure that any willing pharmacy or pharmacist that meets relevant and reasonable participation criteria may join a pharmacy benefits manager network consistent with state and federal law, as most healthcare insurers contract with pharmacy benefits managers to administer pharmacy benefits.

SECTION 3. Arkansas Code § 23-99-203(d), concerning the definition of "healthcare provider" under the Patient Protection Act of 1995, is amended to read as follows:

(d) "Healthcare provider" means those individuals or entities licensed by the State of Arkansas to provide healthcare services, limited to the following:

- (1) Advanced practice nurses;
- (2) Athletic trainers;
- (3) Audiologists;
- (4) Certified behavioral health providers;
- (5) Certified orthotists;
- (6) Chiropractors;
- (7) Community mental health centers or clinics;
- (8) Dentists;
- (9) Home health care;
- (10) Hospice care;
- (11) Hospital-based services;
- (12) Hospitals;
- (13) Licensed ambulatory surgery centers;
- (14) Licensed certified social workers;
- (15) Licensed dietitians;
- (16) Licensed intellectual and developmental disabilities service providers;
- (17) Licensed professional counselors;

- (18) Licensed psychological examiners;
- (19) Long-term care facilities;
- (20) Occupational therapists;
- (21) Optometrists;
- (22) Pharmacists and pharmacies;
- (23) Physical therapists;
- (24) Physicians and surgeons (M.D. and D.O.);
- (25) Podiatrists;
- (26) Prosthetists;
- (27) Psychologists;
- (28) Respiratory therapists;
- (29) Rural health clinics; and
- (30) Speech pathologists.

SECTION 4. Arkansas Code § 23-99-802(4), concerning the definition of "healthcare provider" as used under the any willing provider laws, is amended to read as follows:

(4) "Healthcare provider" or "provider" means those individuals or entities licensed by the State of Arkansas to provide healthcare services, limited to the following:

- (A) Advanced practice nurses;
- (B) Athletic trainers;
- (C) Audiologists;
- (D) Certified behavioral health providers;
- (E) Certified orthotists;
- (F) Chiropractors;
- (G) Community mental health centers or clinics;
- (H) Dentists;
- (I) Home health care;
- (J) Hospice care;
- (K) Hospital-based services;
- (L) Hospitals;
- (M) Licensed ambulatory surgery centers;
- (N) Licensed certified social workers;
- (O) Licensed dietitians;
- (P) Licensed durable medical equipment providers;

(Q) Licensed intellectual and developmental disabilities service providers;

(R) Licensed professional counselors;

(S) Licensed psychological examiners;

(T) Long-term care facilities;

(U) Occupational therapists;

(V) Optometrists;

(W) Pharmacists and pharmacies;

(X) Physical therapists;

(Y) Physicians and surgeons (M.D. and D.O.);

(Z) Podiatrists;

(AA) Prosthetists;

(BB) Psychologists;

(CC) Respiratory therapists;

(DD) Rural health clinics;

(EE) Speech pathologists; and

(FF) Other healthcare practitioners as determined by the State Insurance Department in rules promulgated under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.;

SECTION 5. Arkansas Code Title 23, Chapter 99, Subchapter 2, is amended to add an additional section to read as follows:

23-99-211. Pharmacy benefits manager network participation – Definitions.

(a) As used in this section:

(1) "Pharmacist" means an individual licensed as a pharmacist by the Arkansas State Board of Pharmacy;

(2) "Pharmacy" means the place licensed by the board in which drugs, chemicals, medicines, prescriptions, and poisons are compounded, dispensed, or sold at retail;

(3) "Pharmacy benefits manager" means a person, business, or entity, including a wholly or partially owned or controlled subsidiary of a pharmacy benefits manager, that:

(A) Provides claims processing services or other prescription drug or devices services, or both, for health benefit plans; and

(B) Is licensed under the Arkansas Pharmacy Benefits

Manager Licensure Act, § 23-92-502;

(4)(A) "Pharmacy benefits manager network" means any network of pharmacists or pharmacies that are offered by an agreement or insurance contract to provide pharmacist services for health benefit plans.

(B) "Pharmacy benefits manager network" includes any network delegated by the healthcare payor to the pharmacy benefits manager; and

(5) "Relevant and reasonable terms of participation" means terms and conditions that:

(A) Are consistent with applicable state and federal law;

(B) Are consistent with industry standards; and

(C) Do not arbitrarily or discriminatorily exclude a qualified pharmacy or pharmacist.

(b)(1) A pharmacy benefits manager shall not deny a pharmacy or pharmacist the opportunity to participate in the pharmacy benefits manager's network if the pharmacy or pharmacist:

(A) Is licensed under the laws of this state; and

(B) Agrees to accept and comply with the relevant and reasonable terms of participation as determined under this section.

(2) A pharmacy benefits manager shall not exclude a pharmacy or pharmacist from continued participation in the pharmacy benefits manager's pharmacy benefits manager network if the pharmacy or pharmacist continues to:

(A) Be licensed under the laws of this state; and

(B) Accept and comply with the relevant and reasonable terms of participation as determined under this section.

(3) A pharmacy benefits manager shall not:

(A) Condition participation of a pharmacy or pharmacist in one (1) pharmacy benefits manager network based on participation in any other pharmacy benefits manager network or penalize a pharmacy or pharmacist for exercising his, her, or its prerogative not to participate in a specific pharmacy benefits manager network; or

(B) Limit a pharmacy benefits manager network to include solely:

(i) An affiliated pharmacy; or

(ii) An internet pharmacy or a pharmacy that does not have a physical presence in this state for consumer access.

(c)(1) If a pharmacy or pharmacist alleges that a pharmacy benefits manager has denied or excluded the pharmacy or pharmacist from participation in the pharmacy benefits manager's pharmacy benefits manager network without justification, the pharmacy or pharmacist may submit a written complaint to the Insurance Commissioner.

(2) If a dispute arises as to whether there are "relevant and reasonable terms of participation" as that term is defined in this section, the commissioner shall decide the issue by determining whether the terms or conditions:

(A) Are consistent with applicable state and federal law;
(B) Are consistent with industry standards; and
(C) Do not arbitrarily or discriminatorily exclude a qualified pharmacy or pharmacist.

(3) Within thirty (30) days of receipt of the complaint under subdivision (c)(1) of this section, the commissioner, after a hearing conducted under § 23-61-301 and consideration of evidence from all parties, shall issue a determination.

(4) The determination of the commissioner under subdivision (c)(3) of this section is binding on all parties, subject to judicial review under § 23-61-307.

(d) A pharmacy benefits manager shall not:

(1) Impose terms or conditions that do not meet the definition of "relevant and reasonable terms of participation" under this section;

(2) Utilize reimbursement methodologies or contractual clauses intended to indirectly exclude a willing pharmacy or pharmacist from participation; or

(3) Engage in a practice that discriminates against a pharmacy or pharmacist based on the pharmacy's or pharmacist's geographic location, size, or ownership structure, unless the geographic location, size, or ownership structure is directly relevant to patient care or network adequacy.

(e) This section does not:

(1) Regulate the design or administration of employee benefit plans; or

(2) Impose requirements directly on employee benefit plans.

(f) This section applies to the trade practices of pharmacy benefits managers operating in this state, including a pharmacy benefits manager's

pharmacy benefits manager network participation requirements and marketing or sale of pharmacy benefits manager network products and services, as permitted under state law.

(g) This section is enforceable with respect to a pharmacy benefits manager's compliance with state rules regarding healthcare provider equity and market practices.

(h)(1) The commissioner may promulgate rules necessary to implement, administer, and enforce this section.

(2) Rules that the commissioner may adopt under this section include without limitation rules relating to:

(A) Providing a process for resolving disputes between pharmacies, pharmacists, and pharmacy benefits managers;

(B) Ensuring compliance with state and federal laws; and

(C) Monitoring compliance with this section by licensed pharmacy benefits managers.

(i)(1) After notice and opportunity for a hearing, if a pharmacy benefits manager is found to have violated this section, the commissioner may:

(A) Impose a fine of up to one hundred thousand dollars (\$100,000) per violation;

(B) Prohibit the pharmacy benefits manager from marketing, selling, or utilizing one (1) or more offending products, pharmacy benefits manager networks, or services within this state until the pharmacy benefits manager complies with this section; and

(C) Revoke or suspend the license of a pharmacy benefits manager to operate in this state.

(2) A penalty under subdivision (i)(1) of this section shall be enforced by the commissioner according to rules promulgated under this section.

(j) A prohibition under this section is applicable to a person or entity that:

(1) Performs the prohibited activity;

(2) Causes another person or entity to perform the prohibited activity;

(3) Solicits, advises, encourages, or coerces another person or entity to perform the prohibited activity;

(4) Aids or attempts to aid another person or entity in performing a prohibited activity; or

(5) Indirectly performs the prohibited activity.

SECTION 6. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that many Arkansans rely on access to a diverse and competitive pharmacy network for their healthcare needs; that the inability of some pharmacies or pharmacists to participate in pharmacy benefits manager networks under relevant and reasonable terms of participation poses an immediate threat to the availability and affordability of pharmacy services; and that this act is immediately necessary to protect public health and ensure equitable access to pharmacy care across the state. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.

/s/C. Penzo