

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

State of Arkansas
95th General Assembly
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A Bill

SENATE BILL 544

By: Senators M. Johnson, K. Hammer
By: Representatives Gazaway, Lundstrum

For An Act To Be Entitled

AN ACT TO AMEND THE ARKANSAS PHARMACY BENEFITS
MANAGER LICENSURE ACT; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE ARKANSAS PHARMACY BENEFITS
MANAGER LICENSURE ACT.

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

SECTION 1. Arkansas Code § 23-92-503, concerning definitions used under the Arkansas Pharmacy Benefits Manager Licensure Act, is amended to add additional subdivisions to read as follows:

(16)(A) "Opt-out contract" means an agreement or a contract in which a pharmacy must proactively notify the pharmacy benefits manager if the pharmacy wishes to opt-out of certain terms potentially leading to lower reimbursement rates or network exclusions if the pharmacy does not opt-out of the contract.

(B) "Opt-out contract" includes a term that requires a pharmacy to take affirmative action to opt-out of certain terms or conditions of the contract;

(17)(A) "Pharmacy benefits manager national contract to pharmacies" means a standardized agreement entered into by a pharmacy benefits manager and a network of pharmacies across the United States in which a pharmacy is, either directly or indirectly, passed through a pharmacy services administrative organization messenger model to agree to certain pricing terms and conditions for a patient if that pharmacy is managed or represented by a pharmacy benefits manager network.



(B) "Pharmacy benefits manager national contract to pharmacies" includes a nationwide network of pharmacies that have entered into a contract for national reimbursement rates, terms, and conditions that are not Arkansas-specific with a pharmacy benefits manager to provide pharmacist services, including without limitation dispensing medications to a patient within the pharmacy benefits manager network;

(18)(A) "Place on probation" means an enforcement action against a pharmacy benefits manager for lack of compliance with the requirements of the Arkansas Pharmacy Benefits Manager Licensure Act, § 23-92-501 et seq.

(B) "Place on probation" includes penalties of probation and may include:

(i) Prohibiting on advertising or bidding on new business or requests for proposals;

(ii) Requiring notification of probation to a current contracted plan or program that is directly or indirectly funded by a state appropriation to furnish, cover the cost of, or otherwise provide for pharmacist services to an individual who resides in or is employed in this state; or

(iii) Other penalties established by rule of the Insurance Commissioner;

(19) "Underpayment violation" means:

(A) A violation of § 23-92-506(b);

(B) A violation of § 17-92-507; or

(C) A fair and reasonable compensation payment violation as defined under § 23-92-506(a) and by rule of the commissioner; and

(20) "Unique combination for pharmacy claims" means a pharmacy claims bank identification number, pharmacy claims group number, pharmacy claims processor control number, or any combination of a pharmacy claims bank identification number, pharmacy claims group number, and pharmacy claims processor control number that is used by a pharmacy benefits manager to process a pharmacy claim.

SECTION 2. Arkansas Code § 23-92-506, concerning prohibited practices of a pharmacy benefits manager, is amended to add additional subsections to read as follows:

(f) Upon request, a pharmacy benefits manager, including pharmacy

benefits managers contracting for Medicare pharmacy and pharmacist benefits, shall provide a pharmacy services administrative organization, pharmacy, or pharmacist with each pharmacy claims bank identification number, pharmacy claims group number, pharmacy claims processor control number, and each unique combination for pharmacy claims for each pharmacy network established or administered by a pharmacy benefits manager to enable the pharmacy services administrative organization, pharmacy, or pharmacist to make an informed healthcare contracting decision to support negotiating a new contract or to exit or renew an existing contract.

(g) For a new contract, an opt-out contract, a contract amendment, or a renewal of an existing network, a pharmacy benefits manager, including pharmacy benefits managers contracting for Medicare pharmacy and pharmacist benefits, shall clearly list for the pharmacy services administrative organization, a pharmacy, or pharmacist each pharmacy claims bank identification number, pharmacy claims group number, pharmacy claims processor control number, and each unique combination for pharmacy claims for each pharmacy network established or administered by a pharmacy benefits manager to enable the pharmacy services administrative organization, pharmacy, or pharmacist to make an informed healthcare contracting decision.

(h)(1) An opt-out contract shall include at least sixty-days notice to the pharmacy services administrative organization, pharmacy, or pharmacist.

(2) The notice required under subdivision (h)(1) of this section shall be sent by both email and fax.

(3) The opt-out option in an opt-out contract shall offer the pharmacy services administrative organization, pharmacy, or pharmacist the ability to notify the pharmacy benefits manager of the decision to opt-out or remain in the network.

(4) If a pharmacy benefits manager has not received a reply from the pharmacy services administrative organization, pharmacy, or pharmacist within thirty (30) days of the first notice that the opt-out notice was received, the pharmacy benefits manager shall send a notice to the pharmacy services administrative organization, pharmacy, or pharmacist a notification by certified mail of the opt-out contract.

(i)(1) A pharmacy benefits manager shall not offer "take it or leave it" terms and conditions in a contract that would violate requirements of state law.

(2) A pharmacy benefits manager shall actively respond, communicate, and adjust to the concerns of a pharmacy services administrative organization, pharmacy, or pharmacist that proposed or existing contract and provider manual terms do not follow state law.

(j) A pharmacy benefits manager shall not utilize a pharmacy benefits manager national contract to pharmacies that does not include a separate Arkansas-based amendment or Arkansas-specific contract that clearly complies with this subchapter and other state laws.

SECTION 3. Arkansas Code § 23-92-508(c), concerning the penalties under the Arkansas Pharmacy Benefits Manager Licensure Act, is amended to read as follows:

(c) After notice and opportunity for hearing, the commissioner may:

(1) Impose a penalty of up to five thousand dollars (\$5,000) per violation against a pharmacy benefits manager if the commissioner finds that the pharmacy benefits manager has not:

(A) Followed the process established for determining pricing or costs under the Maximum Allowable Cost List under § 17-92-507; ~~or~~

(B) Used the national average drug acquisition cost under § 23-92-506(b); or

(C) Complied with the requirements of this subchapter;

(2) Revoke, place on probation, or suspend the license of a pharmacy benefits manager or revoke, place on probation, or suspend the use of a specific network used by a pharmacy benefits manager and identified by a registered unique combination for pharmacy claims if the commissioner finds that the pharmacy benefits manager:

(A) Has committed a pattern of violations of this subchapter;

(B) Has not followed the process established for determining pricing and costs under the Maximum Allowable Cost List under § 17-92-507; ~~or~~

(C) Has not used the national average drug acquisition cost under § 23-92-506(b); or

(D) Has violated this subchapter; and

(3) For a pattern of more than two (2) violations of this subchapter, revoke, or prohibit a pharmacy benefits manager for up to three

(3) years from bidding on new business opportunities with a plan or program that is directly or indirectly funded by a state appropriation to furnish, cover the cost of, or otherwise provide for pharmacist services to an individual who resides in or is employed in this state.

SECTION 4. Arkansas Code § 23-92-508, concerning enforcement of the Arkansas Pharmacy Benefits Manager Licensure Act, is amended to add an additional subsection to read as follows:

(d)(1) The commissioner shall require a pharmacy benefits manager that has an underpayment violation to:

(A) Pay twelve percent (12%) interest per month as a penalty to the impacted pharmacy or pharmacist for pharmacist services on an underpayment violation that is calculated on the number of days after the claim was adjudicated until resolution of the underpayment violation; and

(B) Pay the entire amount of the amount of the underpayment violation plus the required interest under subdivision (d)(1) of this section to the impacted pharmacy or pharmacist for pharmacist services on an underpayment violation.

(2) A pharmacy or pharmacist shall not be required to collect an amount of an underpayment violation or interest from a patient in the form of copay or out-of-pocket expense to the patient.

SECTION 5. Arkansas Code § 23-92-509(b)(1), concerning the rules for the Arkansas Pharmacy Benefits Manager Licensure Act, is amended to read as follows:

(b)(1) Rules adopted under this subchapter shall set penalties or fines, including without limitation monetary fines, probation, suspension of licensure or unique combination for pharmacy claims, and revocation of licensure or unique combination for pharmacy claims for violations of this subchapter and rules adopted under this subchapter.