

1 State of Arkansas
2 95th General Assembly
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4

A Bill

HOUSE BILL 1442

5 By: Representative Achor
6 By: Senators D. Wallace, C. Penzo
7

For An Act To Be Entitled

9 AN ACT TO SET RESTRICTIONS ON PHARMACY CONTRACTING
10 AND CONFLICTS OF INTEREST; TO ESTABLISH
11 PHARMACEUTICAL PATIENT FREEDOM OF CHOICE; AND FOR
12 OTHER PURPOSES.
13
14

Subtitle

16 TO SET RESTRICTIONS ON PHARMACY
17 CONTRACTING AND CONFLICTS OF INTEREST;
18 AND TO ESTABLISH PHARMACEUTICAL PATIENT
19 FREEDOM OF CHOICE.
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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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23 SECTION 1. Arkansas Code Title 17, Chapter 92, Subchapter 4, is
24 amended to add an additional section to read as follows:

25 17-92-414. Prohibition of pharmacy contracting - Conflicts of interest
26 - Pharmacy permit holder responsibilities - Definition.

27 (a) It is the intent of the General Assembly to preserve patient
28 access, to improve quality of care outcomes, and to prevent anti-competitive
29 patient steering for pharmacy care services.

30 (b) As used in this section, "parent entity" means a federally
31 qualified health center, a Federally Qualified Health Center Look-Alike, or a
32 for-profit, nonprofit, tax-exempt, or governmentally funded hospital that has
33 a direct or indirect interest or ownership in a licensed pharmacy permit for
34 the sale at retail of drugs and medicines.

35 (c) A parent entity shall not:

36 (1) Financially incentivize a patient or plan beneficiary to



1 obtain a pharmacist's services from a pharmacy with terms that are not
 2 offered equally at other network pharmacies;

3 (2)(A) Allow a pharmacy to be a limited provider of pharmacist's
 4 services through the use of a network design that limits the number of
 5 providers in said network.

6 (B) The board may exempt a parent entity from subdivision
 7 (c)(2)(A) of this section on a per-pharmacy-contract basis if the parent
 8 entity demonstrates a verified net financial loss for the proposed contract;
 9 or

10 (3) Limit a patient's freedom of choice through financial
 11 incentives.

12 (d) Upon receiving a complaint involving a violation of subsection (c)
 13 of this section, the board shall investigate the complaint and schedule a
 14 hearing within thirty (30) business days of receipt of the complaint.

15 (e) A repetitive violation of this section is also a violation of the
 16 Unfair Practices Act, § 4-75-201 et seq.

17 (f) Market-based cash pricing of a drug or medication delinked from
 18 any program assistance, contract, or network agreement of a drug or
 19 medication is not a financial incentive under this section.

20 (g)(1) A parent entity that owns pharmacies and offers prospective
 21 cash savings plans through the 340B Drug Pricing Program shall allow other
 22 network pharmacies to participate in the prospective cash savings plan.

23 (2) The board may exempt a parent entity from subdivision (g)(1)
 24 of this section on a per-pharmacy-contract basis if the parent entity
 25 demonstrates a violation of terms or conditions of the 340B Drug Pricing
 26 Program prospective cash savings plan by the contracted pharmacy.

27 (h) The board shall review for any violation of this section during
 28 the inspections conducted by the board.

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 30 SECTION 2. Arkansas Code Title 23, Chapter 99, is amended to add an
 31 additional subchapter to read as follows:

32 Subchapter 19 – Pharmaceutical Patient Freedom of Choice

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 34 23-99-1901. Legislative intent.

35 It is the intent of the General Assembly to provide a right to freedom
 36 of choice in selecting prescriptions or pharmaceutical supplies and services

1 from a pharmacy of the patient or responsible party.

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3 23-99-1902. Definition.

4 As used in this subchapter, "pharmacy treatment plan" means a plan of
5 care for choice in preferred pharmacy, change of pharmacy, or choice of
6 multiple pharmacies depending on a patient's health conditions, needs, and
7 preferences.

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9 23-99-1903. Pharmaceutical patient freedom of choice.

10 (a) A patient or his or her responsible party shall have freedom of
11 choice of pharmacy or pharmacy treatment plan by any permit holder of the
12 Arkansas State Board of Pharmacy.

13 (b) A patient may make a selection of pharmacy or pharmacy treatment
14 plan only when the patient or his or her responsible party is fully informed
15 of his or her freedom of choice.

16 (c) Any permit holder of the board shall not participate in any plan,
17 agreement, or arrangement that eliminates or detrimentally affects the
18 traditional relationship of physician, patient, pharmacist, and the patient's
19 freedom of choice of professional services.

20 (d)(1) If a for-profit, nonprofit, tax exempt, or governmentally
21 funded hospital, federally qualified health center, or a Federally Qualified
22 Health Center Look-Alike that has direct or indirect interest in a permit
23 holder of the board and a patient is receiving prescriptions issued by
24 prescribers providing services in or for the hospital, emergency room, health
25 system clinic, or any other associated health system facilities for the
26 permit holder, the permit holder shall document the patient's choice of
27 pharmacy or pharmacy treatment plan.

28 (2) The permit holder under subdivision (d)(1) of this section
29 shall maintain:

30 (A) Documentation of the patient's choice of pharmacy or
31 pharmacy treatment plan in the patient's medical record, pharmacy management
32 system, or files; and

33 (B) Policies and procedures that document how the
34 patient's freedom of choice of pharmacy or pharmacy treatment plan is
35 maintained, including brand name and specialty prescriptions that may be
36 eligible under the 340B Drug Pricing Program.

1 (e) A patient may choose or change the provider pharmacy at any time.

2 (f) The board may review documentation, policies, and procedures
3 required under this section for the permit holders of the board during an
4 inspection by the board.

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