

1 State of Arkansas
2 95th General Assembly
3 Regular Session, 2025
4

A Bill

SENATE BILL 103

5 By: Senator C. Penzo
6 By: Representative Lundstrum
7

For An Act To Be Entitled

8
9 AN ACT CONCERNING THE STATE’S ANY WILLING PROVIDER
10 LAWS; TO AMEND THE PATIENT PROTECTION ACT OF 1995; TO
11 CREATE THE PHARMACY NONDISCRIMINATION ACT; TO REQUIRE
12 PHARMACY BENEFITS MANAGERS TO ACCEPT ANY PHARMACY OR
13 PHARMACIST WILLING TO ACCEPT RELEVANT AND REASONABLE
14 TERMS OF PARTICIPATION; TO DECLARE AN EMERGENCY; AND
15 FOR OTHER PURPOSES.
16
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Subtitle

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19 TO CREATE THE PHARMACY NONDISCRIMINATION
20 ACT; TO REQUIRE PHARMACY BENEFITS
21 MANAGERS TO ACCEPT ANY PHARMACY OR
22 PHARMACIST WILLING TO ACCEPT RELEVANT
23 AND REASONABLE TERMS OF PARTICIPATION;
24 AND TO DECLARE AN EMERGENCY.
25

26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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28 SECTION 1. DO NOT CODIFY. Title. This act shall be known and may be
29 cited as the "Pharmacy Nondiscrimination Act".
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31 SECTION 2. DO NOT CODIFY. Legislative findings and intent.

32 (a) The General Assembly finds that:

33 (1) The state’s any willing provider laws under §§ 23-99-204 –
34 23-99-210 ensure fair access to healthcare providers, fostering competition
35 and consumer choice;

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



1 and management of pharmacy benefits; and

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

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

12
13 SECTION 3. Arkansas Code § 23-99-203(d), concerning the definition of
14 "healthcare provider" under the Patient Protection Act of 1995, is amended to
15 read as follows:

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

- 19 (1) Advanced practice nurses;
- 20 (2) Athletic trainers;
- 21 (3) Audiologists;
- 22 (4) Certified behavioral health providers;
- 23 (5) Certified orthotists;
- 24 (6) Chiropractors;
- 25 (7) Community mental health centers or clinics;
- 26 (8) Dentists;
- 27 (9) Home health care;
- 28 (10) Hospice care;
- 29 (11) Hospital-based services;
- 30 (12) Hospitals;
- 31 (13) Licensed ambulatory surgery centers;
- 32 (14) Licensed certified social workers;
- 33 (15) Licensed dietitians;
- 34 (16) Licensed intellectual and developmental disabilities
35 service providers;
- 36 (17) Licensed professional counselors;

- 1 (18) Licensed psychological examiners;
- 2 (19) Long-term care facilities;
- 3 (20) Occupational therapists;
- 4 (21) Optometrists;
- 5 (22) Pharmacists and pharmacies;
- 6 (23) Physical therapists;
- 7 (24) Physicians and surgeons (M.D. and D.O.);
- 8 (25) Podiatrists;
- 9 (26) Prosthetists;
- 10 (27) Psychologists;
- 11 (28) Respiratory therapists;
- 12 (29) Rural health clinics; and
- 13 (30) Speech pathologists.
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15 SECTION 4. Arkansas Code § 23-99-802(4), concerning the definition of
16 "healthcare provider" as used under the any willing provider laws, is amended
17 to read as follows:

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

- 21 (A) Advanced practice nurses;
- 22 (B) Athletic trainers;
- 23 (C) Audiologists;
- 24 (D) Certified behavioral health providers;
- 25 (E) Certified orthotists;
- 26 (F) Chiropractors;
- 27 (G) Community mental health centers or clinics;
- 28 (H) Dentists;
- 29 (I) Home health care;
- 30 (J) Hospice care;
- 31 (K) Hospital-based services;
- 32 (L) Hospitals;
- 33 (M) Licensed ambulatory surgery centers;
- 34 (N) Licensed certified social workers;
- 35 (O) Licensed dieticians;
- 36 (P) Licensed durable medical equipment providers;

- 1 (Q) Licensed intellectual and developmental disabilities
- 2 service providers;
- 3 (R) Licensed professional counselors;
- 4 (S) Licensed psychological examiners;
- 5 (T) Long-term care facilities;
- 6 (U) Occupational therapists;
- 7 (V) Optometrists;
- 8 (W) Pharmacists and pharmacies;
- 9 (X) Physical therapists;
- 10 (Y) Physicians and surgeons (M.D. and D.O.);
- 11 (Z) Podiatrists;
- 12 (AA) Prosthetists;
- 13 (BB) Psychologists;
- 14 (CC) Respiratory therapists;
- 15 (DD) Rural health clinics;
- 16 (EE) Speech pathologists; and
- 17 (FF) Other healthcare practitioners as determined by the
- 18 State Insurance Department in rules promulgated under the Arkansas
- 19 Administrative Procedure Act, § 25-15-201 et seq.;
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21 SECTION 5. Arkansas Code Title 23, Chapter 99, Subchapter 2, is
 22 amended to add an additional section to read as follows:

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

25 (a) As used in this section:

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

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

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

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

36 (B) Is licensed under the Arkansas Pharmacy Benefits

1 Manager Licensure Act, § 23-92-502;

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

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

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

10 (i) Are consistent with applicable state and federal
11 law;

12 (ii) Are consistent with industry standards; and

13 (iii) Do not arbitrarily or discriminatorily exclude
14 a qualified pharmacy or pharmacist.

15 (B) "Relevant and reasonable terms of participation" does
16 not include if the pharmacy benefits manager performs a prohibited practice
17 of requiring accreditation standards and certification standards that are
18 more stringent or in addition to the standards required by the board for a
19 pharmacy licensed in this state.

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

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

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

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

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

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

32 (3) A pharmacy benefits manager shall not:

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

1 pharmacy benefits manager network; or

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

4 (i) An affiliated pharmacy; or

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

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

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

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

17 (B) Are consistent with industry standards; and

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

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

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

27 (d) A pharmacy benefits manager shall not:

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

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

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

1 (e) This section does not:

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

4 (2) Impose requirements directly on employee benefit plans.

5 (f) This section applies to the trade practices of pharmacy benefits
6 managers operating in this state, including a pharmacy benefits manager's
7 pharmacy benefits manager network participation requirements and marketing or
8 sale of pharmacy benefits manager network products and services, as permitted
9 under state law.

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

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

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

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

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

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

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

25 (A) Impose a fine of up to one hundred thousand dollars
26 (\$100,000) per violation;

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

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

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

36 (j) A prohibition under this section is applicable to a person or

1 entity that:

2 (1) Performs the prohibited activity;

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

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

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

9 (5) Indirectly performs the prohibited activity.

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

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

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

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

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