

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

A Bill

SENATE BILL 104

4
5 By: Senator C. Penzo
6 By: Representative Lundstrum

For An Act To Be Entitled

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8
9 AN ACT TO AMEND THE ARKANSAS PHARMACY BENEFITS
10 MANAGER LICENSURE ACT; TO PROTECT PATIENTS' RIGHTS
11 AND ACCESS TO MEDICATIONS; TO DECLARE AN EMERGENCY;
12 AND FOR OTHER PURPOSES.

Subtitle

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16 TO AMEND THE ARKANSAS PHARMACY BENEFITS
17 MANAGER LICENSURE ACT; TO PROTECT
18 PATIENTS' RIGHTS AND ACCESS TO
19 MEDICATIONS; AND TO DECLARE AN
20 EMERGENCY.

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

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24 SECTION 1. DO NOT CODIFY. Legislative intent.

25 It is the intent of the General Assembly that this act shall regulate
26 the business practices of healthcare payors and pharmacy benefits managers:

27 (1) To ensure adequate access to pharmacy services as intended
28 and designed by underlying health benefit plans;

29 (2) To protect patients from unfair and deceptive trade
30 practices within the state; and

31 (3) To ensure pharmacy benefits management companies do not
32 interfere with a patient's rights under the patient's underlying health
33 benefit plan and always consider each patient's unique conditions and
34 limitations when enforcing any access prerequisites or conditions.

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36 SECTION 2. Arkansas Code § 23-92-503, concerning the definitions used



1 in the Arkansas Pharmacy Benefits Manager Licensure Act, is amended to add
2 additional subdivisions to read as follows:

3 (16) "Affiliate" means an entity that controls, is controlled
4 by, or is under common control with another entity, including an entity in
5 which control is established through one (1) or more intermediary entities,
6 such that the common controlling interest may be two (2) or more levels
7 removed from the specified entity;

8 (17)(A) "Carve-out network" means a subset of a pharmacy
9 benefits manager's network that:

10 (i) Is created by the pharmacy benefits manager; and
11 (ii) Limits access to a certain pharmacy or
12 pharmacist for a specific drug or category of drugs.

13 (B) "Carve-out network" includes any network that
14 restricts enrollee access to in-person pharmacy services within this state by
15 offering only limited methods of obtaining a prescription drug, including
16 mail-order only options, while presenting the appearance of a full network of
17 available pharmacies;

18 (18) "Enrollee" means an individual who is entitled to receive
19 healthcare services under the terms of a health benefit plan;

20 (19)(A) "Ghost network" means a pharmacy benefits manager
21 network that includes a pharmacy or pharmacist as a participating provider
22 when that participating provider is:

23 (i) Not accepting new patients;
24 (ii) No longer in practice; or
25 (iii) Otherwise unavailable to or restricted from
26 providing services to enrollees in this state.

27 (B) "Ghost network" includes a pharmacy network in which a
28 significant number of listed participating providers are not accessible to
29 enrollees within a reasonable time frame or geographic distance;

30 (20) "Healthcare payor affiliate" means a pharmacy or pharmacist
31 that directly or indirectly, through one (1) or more intermediaries, owns or
32 controls, is owned or controlled by, or is under common ownership or control
33 with a healthcare payor; and

34 (21)(A) "Self-administered prescription drug" means a
35 pharmaceutical that when prescribed does not require assistance by a third
36 party to administer and can be dispensed by a pharmacy or pharmacist to an

1 enrollee for self-administration under federal and state laws and
2 regulations.

3 (B) "Self-administered prescription drug" does not include
4 over-the-counter medications that do not require a prescription.

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6 SECTION 3. Arkansas Code § 23-92-506(b), concerning prohibited
7 practices under the Arkansas Pharmacy Benefits Manager Licensure Act, is
8 amended to add an additional subdivision to read as follows:

9 (9) Unless reviewed and approved by the commissioner in
10 coordination with the board, require pharmacy accreditation standards or
11 certification requirements inconsistent with, more stringent than, or in
12 addition to requirements of the board.

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14 SECTION 4. Arkansas Code Title 23, Chapter 92, Subchapter 5, is
15 amended to add additional sections to read as follows:

16 23-92-512. Unfair and deceptive trade practices.

17 (a)(1) A healthcare payor, healthcare payor affiliate, pharmacy
18 benefits manager, or pharmacy benefits manager affiliate shall not engage in
19 unfair or deceptive trade practices in the administration of pharmacy
20 benefits.

21 (2) Unfair or deceptive trade practices under subdivision (a)(1)
22 of this section include without limitation:

23 (A) Requiring an enrollee to utilize a particular
24 healthcare payor affiliate or pharmacy benefits manager affiliate;

25 (B) Requiring a pharmacy or pharmacist to forward or
26 retransmit a prescription to a specific healthcare payor affiliate or
27 pharmacy benefits manager affiliate unless the receiving healthcare payor
28 affiliate or pharmacy benefits manager affiliate can provide verifiable
29 documentation of the enrollee's consent to use that specific pharmacy;

30 (C) Implementing a policy or protocol that unreasonably
31 restricts an enrollee's choice of pharmacy within the pharmacy benefits
32 manager network, if:

33 (i)(a) The pharmacy meets the pharmacy benefits
34 manager network's relevant and reasonable terms of participation
35 requirements.

36 (b) A disagreement or concern regarding

1 whether relevant and reasonable terms of participation requirements are
2 relevant and reasonable shall be determined by the Insurance Commissioner;
3 and

4 (ii) The pharmacy has existing approval to dispense
5 one (1) or more self-administered prescription drugs in the pharmacy benefits
6 manager network or one (1) or more networks for the underlying health benefit
7 plan;

8 (D)(i) Providing an incentive or imposing a penalty that
9 effectively coerces or pressures an enrollee to use a particular healthcare
10 payor affiliate or pharmacy benefits manager affiliate.

11 (ii) Adjustments to an enrollee's cost-sharing
12 responsibilities, including copayments, coinsurance, or deductibles, that are
13 part of the health benefit plan's design are not considered incentives or
14 penalties under subdivision (a)(2)(D)(i) of this section;

15 (E) Failing to disclose to an enrollee the options
16 available for obtaining prescription drugs within the pharmacy benefits
17 manager network;

18 (F) Disclosing, sharing, or otherwise making available
19 enrollee information or enrollee-identifiable prescription information
20 submitted by a pharmacist or pharmacy to a healthcare payor affiliate or
21 pharmacy benefits manager affiliate without the written consent of the
22 enrollee;

23 (G) Using or disclosing enrollee information or enrollee-
24 identifiable prescription information for marketing or solicitation purposes
25 without the written consent of the enrollee; and

26 (H)(i) Engaging in any conduct that unlawfully restricts,
27 limits, or interferes with an enrollee's right to choose a pharmacy or
28 pharmacist, including without limitation actions that violate federal law or
29 state law or improperly steer enrollees to a specific pharmacy or pharmacist.

30 (ii) The prohibition under subdivision (a)(2)(H)(i)
31 of this section does not apply to a change in patient cost-sharing
32 obligations, including copayments, coinsurance, or deductibles, that are
33 permitted under applicable law.

34 (b)(1) A healthcare payor, healthcare payor affiliate, pharmacy
35 benefits manager, or pharmacy benefits manager affiliate shall not impose
36 restrictive terms or conditions that limit an enrollee's or an enrollee's

1 assigned representative's rights to seek an exception to or to appeal a
2 coverage decision or restriction with his or her health benefit plan.

3 (2) A healthcare payor, healthcare payor affiliate, pharmacy
4 benefits manager, or pharmacy benefits manager affiliate shall ensure that:

5 (A) The processes for seeking an exception and filing an
6 appeal are clearly communicated to patients in a publicly accessible manner
7 on its website;

8 (B) The information necessary to utilize the processes
9 under subdivision (b)(2)(A) of this section is presented in a manner that is
10 understandable and not hidden or obscured; and

11 (C) An enrollee is not hindered or obstructed from
12 exercising the rights granted to the enrollee under the enrollee's health
13 benefit plan.

14 (c)(1) A healthcare payor shall not prohibit, restrict, or impede an
15 enrollee's or an enrollee's authorized representative's ability to:

16 (A) Discuss the enrollee's health benefit plan, including
17 prescription drug benefits, with the healthcare payor or its authorized
18 representatives;

19 (B) Obtain necessary exceptions, approvals,
20 authorizations, or related information to access the enrollee's benefits; or

21 (C) Appeal decisions regarding the enrollee's benefits
22 coverage decisions as provided under the terms of the enrollee's health
23 benefit plan.

24 (2) The healthcare payor shall ensure that an enrollee has
25 reasonable access to the discussions, approvals, and appeals processes
26 regardless of the pharmacy benefits manager, affiliate, or third-party
27 administrator selected to administer prescription benefits.

28 (3) It is an unfair and deceptive trade practice for a
29 healthcare payor to delegate responsibilities in a manner that obstructs,
30 hinders, or prevents an enrollee from exercising the enrollee's rights under
31 his or her health benefit plan.

32 (d)(1) A pharmacy benefits manager and pharmacy benefits manager
33 affiliate shall adhere to all applicable federal and state privacy laws when
34 communicating with an enrollee.

35 (2) A pharmacy benefits manager and pharmacy benefits manager
36 affiliate shall not use enrollee information for marketing purposes without

1 the written consent of the enrollee.

2 (e) A pharmacy benefits manager and pharmacy benefits manager
 3 affiliate shall comply with the timely processing of complaints and appeals
 4 as established by rule of the commissioner.

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

7 (2) Rules that the commissioner may adopt under this section
 8 include without limitation rules relating to implementing a penalty structure
 9 for a healthcare payor, healthcare payor affiliate, pharmacy benefits
 10 manager, or pharmacy benefits manager affiliate that fails to comply with
 11 this section that is based on the number of Arkansas residents serviced by
 12 the healthcare payor, healthcare payor affiliate, pharmacy benefits manager,
 13 or pharmacy benefits manager affiliate.

14 (g)(1) A violation of this subchapter is an unfair and deceptive act
 15 or practice as defined by the Deceptive Trade Practices Act, § 4-88-101 et
 16 seq.

17 (2) All remedies, penalties, and authority granted to the
 18 Attorney General under the Deceptive Trade Practices Act, § 4-88-101 et seq.,
 19 shall be available to the Attorney General for the enforcement of this
 20 subchapter.

21
 22 23-92-513. Prohibition of ghost networks.

23 (a) A pharmacy benefits manager shall not create, utilize, or maintain
 24 a ghost network within this state.

25 (b) A healthcare payor or pharmacy benefits manager shall not create,
 26 utilize, or maintain a carve-out network within this state by:

27 (1) Limiting enrollee access to specific pharmacies or
 28 pharmacists for self-administered prescription drugs when an enrollee is
 29 directed to use a healthcare payor affiliate, pharmacy benefits manager
 30 affiliate, or other limited option while the pharmacy benefits manager
 31 network appears to offer a full range of pharmacist services;

32 (2) Failing to provide adequate access to in-person pharmacy
 33 services within this state for all covered self-administered prescription
 34 drugs; or

35 (3) Representing that a broad network of pharmacies or
 36 pharmacists is available if, in practice, access to certain self-administered

1 prescription drugs is restricted to a carve-out network that lacks sufficient
2 in-state providers accessible to an enrollee.

3 (c) A healthcare payor or pharmacy benefits manager shall ensure that
4 its pharmacy benefits manager network of participating pharmacists and
5 pharmacies:

6 (1) Accurately reflects the availability of pharmacists and
7 pharmacies actively accepting new patients;

8 (2) Provides an enrollee with reasonable access to pharmacist
9 services within this state, including options for in-person consultations and
10 medication pickup from a licensed pharmacist or pharmacy in this state;

11 (3) Is not solely serviced by a mail-order pharmacy; and

12 (4) Is not solely serviced by a pharmacy benefits manager
13 affiliate or healthcare payor affiliate.

14 (d) A healthcare payor or pharmacy benefits manager shall:

15 (1) Regularly verify and update its pharmacy benefits manager
16 network directory to reflect the current availability of participating
17 pharmacists and pharmacies;

18 (2) Remove a pharmacist or pharmacy from its pharmacy benefits
19 manager network directory if that pharmacist or pharmacy is:

20 (A) Not accepting new patients;

21 (B) No longer in practice; or

22 (C) Otherwise unavailable to provide services; and

23 (3) Provide accurate and accessible information to an enrollee
24 regarding participating pharmacists and pharmacies within the pharmacy
25 benefits manager network in a publicly accessible manner on its website.

26 (e)(1) The Insurance Commissioner may promulgate rules necessary to
27 implement, administer, and enforce this section.

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

30 (A) Requiring a healthcare payor and pharmacy benefits
31 manager to submit periodic reports on pharmacy benefits manager network
32 adequacy and accessibility;

33 (B) Investigating a complaint regarding a ghost network
34 and taking appropriate enforcement action; and

35 (C) Implementing a penalty structure for a healthcare
36 payor or pharmacy benefits manager that fails to comply with this section

1 that:

2 (i) Is based on the number of Arkansas residents
3 serviced by the healthcare payor or pharmacy benefits manager; and

4 (ii) Does not exceed one hundred thousand dollars
5 (\$100,000) per violation.

6
7 23-92-514. Patient accommodation and nonrestriction clause.

8 (a) A healthcare payor or pharmacy benefits manager shall not enforce
9 the use of a particular healthcare payor affiliate or pharmacy benefits
10 manager affiliate or otherwise restrict an enrollee's choice of pharmacist or
11 pharmacy without considering the enrollee's individual limitations, including
12 without limitation:

13 (1) Medical limitations, including chronic illnesses, temporary
14 or permanent disabilities, or conditions requiring specialized care or that
15 impair cognitive or motor functions;

16 (2) Complex therapies, when the self-administered prescription
17 drug is one (1) of multiple pharmaceuticals provided to an enrollee receiving
18 treatment and mailing the individual pharmaceutical has the potential to
19 interfere with the appropriate and timely administration requirements;

20 (3) Physical limitations, including mobility impairments or
21 inability to retrieve mail or other deliveries without assistance or risk for
22 physical harm to self while retrieving mail or other deliveries;

23 (4) Socioeconomic limitations, including financial hardships,
24 lack of reliable transportation, lack of a caregiver, or other socioeconomic
25 barriers that may prohibit an enrollee from being present during delivery or
26 prohibit an enrollee from accessing the delivery location;

27 (5) Housing limitations, including homelessness, medical
28 confinement, incarceration, unstable housing situations, residences without
29 secure mail delivery options, or residences with shared mail facilities;

30 (6) Chain of custody, when a dispensing pharmacy cannot
31 guarantee that the recipient of the self-administered prescription drug will
32 be present according to federal and state laws and regulations;

33 (7) Prescribing provider order contradictions, when the
34 dispensing pharmacy is unable to guarantee that the prescribing provider's
35 orders will be followed if the self-administered prescription drug is
36 delivered, including situations in which the prescribing provider requires

1 administration under direct supervision of a medical professional for a
2 customarily self-administered prescription drug;

3 (8) Medication storage and efficacy concerns, when the
4 dispensing pharmacy is unable to guarantee that the enrollee will receive the
5 self-administered prescription drug in a timely fashion that does not
6 interfere with the environmental storage and transportation requirements
7 denoted by the manufacturer of the pharmaceutical; and

8 (9) Other relevant limitations, including mental health
9 conditions, cognitive or behavioral impairments, or any other factors that
10 impede or put at risk an enrollee's ability to receive, access, or administer
11 his or her self-administered prescription drugs.

12 (b)(1) An enrollee may obtain medications from a pharmacy of his or
13 her choice when healthcare payor affiliate services or pharmacy benefits
14 manager affiliate services are not suitable due to the limitations specified
15 under subsection (a) of this section.

16 (2) A healthcare payor or pharmacy benefits manager shall
17 facilitate access to in-person pharmacy services without imposing additional
18 costs or penalties on the enrollee.

19 (c) A healthcare payor or pharmacy benefits manager shall not mandate
20 the use of a healthcare payor affiliate or pharmacy benefits manager
21 affiliate in cases in which use of a pharmacy benefits manager affiliate or
22 healthcare payor affiliate would adversely affect the enrollee's ability to
23 receive or administer his or her self-administered prescription drug safely
24 and effectively, considering the patient's individual circumstances under
25 subsection (a) of this section as determined by the enrollee's healthcare
26 provider.

27 (d) A healthcare payor and pharmacy benefits manager shall maintain
28 compliance in all dispensing practices with:

29 (1) The prescribing healthcare provider's orders; and

30 (2) All applicable federal and state laws regarding medication
31 dispensing and chain of custody.

32 (e) A healthcare payor or pharmacy benefits manager shall not
33 retaliate against an enrollee or healthcare provider for exercising his or
34 her rights under this section by:

35 (1) Increasing costs;

36 (2) Denying services; or

1 (3) Reporting to external agencies.

2 (f) A dispute arising from the enforcement of this section shall be
 3 subject to a fair and prompt resolution process as defined by rule by the
 4 Insurance Commissioner.

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

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

9 (A) Resolving disputes that arise from enforcement of this
 10 section through a fair and prompt resolution process; and

11 (B) Implementing a penalty structure for a healthcare
 12 payor or pharmacy benefits manager that fails to comply with this section
 13 that:

14 (i) Is based on the number of Arkansas residents
 15 serviced by the healthcare payor or pharmacy benefits manager; and

16 (ii) Does not exceed one hundred thousand dollars
 17 (\$100,000) per violation.

18
 19 23-92-515. Self-administered prescription drug – Definition
 20 controlling.

21 (a) The definition of "self-administered prescription drug" under this
 22 subchapter is controlling, and that defined term shall not be altered,
 23 modified, reclassified, relabeled, or reinterpreted by a health benefit plan,
 24 healthcare payor, healthcare payor affiliate, pharmacy benefits manager, or
 25 pharmacy benefits manager affiliate.

26 (b) A classification, labeling, or interpretation by a health benefit
 27 plan, healthcare payor, healthcare payor affiliate, pharmacy benefits
 28 manager, or pharmacy benefits manager affiliate does not override or
 29 supersede the definition of "self-administered prescription drug" under this
 30 subchapter.

31
 32 23-92-516. Violation of Deceptive Trade Practices Act – Enforcement.

33 A prohibition of an activity under this subchapter is applicable to a
 34 person or entity that:

35 (1) Performs the prohibited activity;

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

1 activity;

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

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

6 (5) Indirectly performs the prohibited activity.

7
8 SECTION 5. EMERGENCY CLAUSE. It is found and determined by the
9 General Assembly of the State of Arkansas that an enrollee's access to
10 prescription medications is of immediate concern; that undue restrictions on
11 pharmacies and pharmacists hinder patient care; and that this act is
12 immediately necessary to protect an enrollee's rights and ensure timely
13 access to medications. Therefore, an emergency is declared to exist, and this
14 act being immediately necessary for the preservation of the public peace,
15 health, and safety shall become effective on:

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

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

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

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