

1 State of Arkansas
2 95th General Assembly
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4

As Engrossed: S3/17/25

A Bill

SENATE BILL 103

5 By: Senators C. Penzo, *Irvin, M. Johnson*
6 By: Representative Lundstrum
7

For An Act To Be Entitled

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
17

Subtitle

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:
27

28 SECTION 1. DO NOT CODIFY. Title. This act shall be known and may be
29 cited as the "Pharmacy Nondiscrimination Act".
30

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.

14

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 dietitians;
- 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.;

20
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) "Relevant and reasonable terms of participation" means terms
9 and conditions that:

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

11 (B) Are consistent with industry standards; and

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

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

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

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

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

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

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

26 (3) A pharmacy benefits manager shall not:

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

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

34 (i) An affiliated pharmacy; or

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

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

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

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

11 (B) Are consistent with industry standards; and

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

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

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

21 (d) A pharmacy benefits manager shall not:

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

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

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

31 (e) This section does not:

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

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

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

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

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

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

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

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

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

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

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

19 (A) Impose a fine of up to one hundred thousand dollars
20 (\$100,000) per violation;

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

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

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

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

32 (1) Performs the prohibited activity;

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

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

