

1 State of Arkansas
2 90th General Assembly
3 Regular Session, 2015
4

As Engrossed: S3/12/15
A Bill

SENATE BILL 688

5 By: Senators Caldwell, Maloch, G. Stubblefield
6 By: Representatives M. Gray, Vaught, Eubanks, Bragg
7

8 **For An Act To Be Entitled**

9 AN ACT TO AMEND THE LAWS REGARDING MAXIMUM ALLOWABLE
10 COST LISTS; TO CREATE ACCOUNTABILITY IN THE
11 ESTABLISHMENT OF PRESCRIPTION DRUG PRICING; AND FOR
12 OTHER PURPOSES.
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14 **Subtitle**

15 TO AMEND THE LAWS REGARDING MAXIMUM
16 ALLOWABLE COST LISTS; AND TO CREATE
17 ACCOUNTABILITY IN THE ESTABLISHMENT OF
18 PRESCRIPTION DRUG PRICING.
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

24 SECTION 1. Arkansas Code § 17-92-507 is amended to read as follows:
25 17-92-507. Maximum Allowable Cost Lists.

26 (a) As used in this section:

27 (1) "Maximum Allowable Cost List" means a listing of drugs used
28 by a pharmacy benefits manager setting the maximum allowable cost on which
29 reimbursement to a pharmacy or pharmacist may be based;

30 (2) "Pharmaceutical wholesaler" means a person or entity that
31 sells and distributes prescription pharmaceutical products, including without
32 limitation a full line of brand-name, generic, and over-the-counter
33 pharmaceuticals, and that offers regular and private delivery to a pharmacy;

34 ~~(3)~~ (3) "Pharmacist" means a licensed pharmacist as defined in §
35 17-92-101;

36 ~~(3)~~ (4) "Pharmacist services" means products, goods, or services



1 provided as a part of the practice of pharmacy in Arkansas;

2 ~~(4)~~(5) "Pharmacy" means the same as in § 17-92-101;

3 ~~(5)~~(6) "Pharmacy acquisition cost" means the amount that a
4 pharmaceutical wholesaler charges for a pharmaceutical product as listed on
5 the pharmacy's billing invoice;

6 (7) "Pharmacy benefits manager" means an entity that administers
7 or manages a pharmacy benefits plan or program; ~~and~~

8 (8) "Pharmacy benefits manager affiliate" means a pharmacy or
9 pharmacist that directly or indirectly, through one (1) or more
10 intermediaries owns or controls, is owned or controlled by, or is under
11 common ownership or control with a pharmacy benefits manager; and

12 ~~(6)~~(9) "Pharmacy benefits plan or program" means a plan or
13 program that pays for, reimburses, covers the cost of, or otherwise provides
14 for pharmacist services to individuals who reside in or are employed in this
15 state.

16 (b) Before a pharmacy benefits manager places or continues a
17 particular drug on a Maximum Allowable Cost List, the drug:

18 (1) Shall be listed as therapeutically equivalent and
19 pharmaceutically equivalent "A" or "B" rated in the United States Food and
20 Drug Administration's most recent version of the "Orange Book" or "Green
21 Book" or has an NR or NA rating by *Medi-spanTM*, *Gold Standard*, or a similar
22 rating by a nationally recognized reference;

23 (2) Shall be available for purchase by each pharmacy in the
24 state from national or regional wholesalers operating in ~~Arkansas~~, Arkansas;
25 and

26 (3) Shall not be obsolete.

27 (c) A pharmacy benefits manager shall:

28 (1) Provide access to its Maximum Allowable Cost List to each
29 pharmacy subject to the Maximum Allowable Cost List;

30 (2) Update its Maximum Allowable Cost List on a timely basis,
31 but in no event longer than seven (7) calendar days from an increase of ten
32 percent (10%) or more in the pharmacy acquisition cost from sixty percent
33 (60%) or more of the pharmaceutical wholesaler doing business in the state or
34 a change in the methodology on which the Maximum Allowable Cost List is based
35 or in the value of a variable involved in the methodology;

36 (3) Provide a process for each pharmacy subject to the Maximum

1 Allowable Cost List to receive prompt notification of an update to the
2 Maximum Allowable Cost List; and

3 ~~(4)(A)(i) Within three (3) business days after the applicable~~
4 ~~fill date, provide~~ Provide a reasonable administrative appeal procedure to
5 allow pharmacies to challenge *maximum allowable costs and reimbursements made*
6 *under a maximum allowable cost* for a specific drug or drugs as:

7 ~~(i)(a)~~ (a) Not meeting the requirements of this section;
8 or

9 ~~(ii)(b) Being below the cost at which the pharmacy~~
10 ~~may obtain the drug~~ pharmacy acquisition cost.

11 (ii) The reasonable administrative appeal procedure
12 shall include the following:

13 (a) A dedicated telephone number and email
14 address or website for the purpose of submitting administrative appeals;

15 (b) The ability to submit an administrative
16 appeal directly to the pharmacy benefits manager regarding the pharmacy
17 benefits plan or program or through a pharmacy service administrative
18 organization; and

19 (c) No less than seven (7) business days to
20 file an administrative appeal.

21 (B) The pharmacy benefits manager shall respond to the
22 challenge under subdivision (c)(4)(A)~~(i)~~ of this section within seven (7)
23 business days after receipt of the challenge.

24 (C) If a challenge is under subdivision (c)(4)(A)~~(i)~~ of
25 this section, the pharmacy benefits manager shall within seven (7) business
26 days after receipt of the challenge either:

27 (i) If the appeal is upheld:

28 (a) Make the change in the maximum allowable
29 cost;

30 (b) Permit the challenging pharmacy or
31 pharmacist to reverse and rebill the claim in question; ~~and~~

32 (c) Provide the National Drug Code number that
33 the increase or change is based on to the pharmacy or pharmacist; and

34 ~~(e)(d)~~ (d) Make the change under subdivision
35 (c)(4)(C)(i)(a) of this section effective for each similarly situated
36 pharmacy as defined by the payor subject to the Maximum Allowable Cost List;

1 ~~ex~~

2 (ii) If the appeal is denied, provide the
3 challenging pharmacy or pharmacist the National Drug Code number ~~from~~ and the
4 name of the national or regional pharmaceutical wholesalers operating in
5 Arkansas that have the drug currently in stock at a price below the Maximum
6 Allowable Cost List; or

7 (iii) If the National Drug Code number provided by
8 the pharmacy benefits manager is not available below the pharmacy acquisition
9 cost from the pharmaceutical wholesaler from whom the pharmacy or pharmacist
10 purchases the majority of prescription drugs for resale, then the pharmacy
11 benefits manager shall adjust the Maximum Allowable Cost List above the
12 challenging pharmacy's pharmacy acquisition cost and permit the pharmacy to
13 reverse and rebill each claim affected by the inability to procure the drug
14 at a cost that is equal to or less than the previously challenged maximum
15 allowable cost.

16 (d)(1) A pharmacy benefits manager shall not reimburse a pharmacy or
17 pharmacist in the state an amount less than the amount that the pharmacy
18 benefits manager reimburses a pharmacy benefits manager affiliate for
19 providing the same pharmacist services.

20 (2) The amount shall be calculated on a per unit basis based on
21 the same generic product identifier or generic code number.

22 (e) A pharmacy or pharmacist may decline to provide the pharmacist
23 services to a patient or pharmacy benefits manager if, as a result of a
24 Maximum Allowable Cost List, a pharmacy or pharmacist is to be paid less than
25 the pharmacy acquisition cost of the pharmacy providing pharmacist services.

26 (f)(1) This section does not apply to a Maximum Allowable Cost List
27 maintained by the Arkansas Medicaid Program or the Employee Benefits Division
28 of the Department of Finance and Administration.

29 (2) This section shall apply to the pharmacy benefits manager
30 employed by the Arkansas Medicaid Program or the Employee Benefits Division
31 if, at any time, the Arkansas Medicaid Program or the Employee Benefits
32 Division engages the services of a pharmacy benefits manager to maintain a
33 Maximum Allowable Cost List.

34 ~~(e)(g)~~ A violation of this section is a deceptive and unconscionable
35 trade practice under § 4-88-101 et seq.

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/s/Caldwell

APPROVED: 04/01/2015