

1 State of Arkansas  
2 94th General Assembly  
3 Regular Session, 2023  
4

# A Bill

HOUSE BILL 1481

5 By: Representative Achor  
6 By: Senator J. Boyd  
7

## For An Act To Be Entitled

9 AN ACT TO CREATE THE HEALTHCARE INSURER SHARE THE  
10 SAVINGS ACT; TO CREATE THE ARKANSAS PHARMACY BENEFITS  
11 MANAGER SHARE THE SAVINGS ACT; AND FOR OTHER  
12 PURPOSES.  
13  
14

## Subtitle

15 TO CREATE THE HEALTHCARE INSURER SHARE  
16 THE SAVINGS ACT; AND TO CREATE THE  
17 ARKANSAS PHARMACY BENEFITS MANAGER SHARE  
18 THE SAVINGS ACT.  
19  
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
23

24 SECTION 1. Arkansas Code Title 23, Chapter 79, is amended to add an  
25 additional subchapter to read as follows:  
26

### Subchapter 24 – Healthcare Insurer Share the Savings Act

#### 23-79-2401. Title.

29 This subchapter shall be known and may be cited as the "Healthcare  
30 Insurer Share the Savings Act".  
31  
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#### 23-79-2402. Definitions.

33 As used in this subchapter:  
34

35 (1) "Defined cost sharing" means a deductible payment or  
36 coinsurance amount imposed on an enrollee for a covered prescription drug



1 under the enrollee's health benefit plan;

2 (2) "Enrollee" means an individual entitled to coverage of  
 3 healthcare services from a healthcare insurer;

4 (3)(A) "Health benefit plan" means any individual, blanket, or  
 5 group plan, policy, or contract for healthcare services issued or delivered  
 6 by a healthcare insurer in this state.

7 (B) "Health benefit plan" does not include:

8 (i) Accident-only plans;

9 (ii) Specified disease plans;

10 (iii) Disability income plans;

11 (iv) Plans that provide only for indemnity for  
 12 hospital confinement;

13 (v) Long-term-care-only plans that do not include  
 14 pharmacy benefits;

15 (vi) Other limited-benefit health insurance policies  
 16 or plans;

17 (vii) Health benefit plans provided under Arkansas  
 18 Constitution, Article 5, § 32, the Workers' Compensation Law, § 11-9-101 et  
 19 seq., or the Public Employee Workers' Compensation Act, § 21-5-601 et seq.;  
 20 or

21 (viii) Any state or local governmental employee  
 22 plan;

23 (4)(A) "Healthcare insurer" means a:

24 (i) Health insurance issuer that:

25 (a) Is subject to state law regulating  
 26 insurance; and

27 (b) Offers health insurance coverage under 42  
 28 U.S.C. § 300gg-91, as it existed on January 1, 2023;

29 (ii) Health maintenance organization; or

30 (iii) Hospital and medical service corporation.

31 (B) "Healthcare insurer" does not include an entity that  
 32 provides only dental benefits or eye and vision care benefits;

33 (5) "Price protection rebate" means a negotiated price  
 34 concession that accrues directly or indirectly to a healthcare insurer, or  
 35 other party on behalf of the healthcare insurer, if there is an increase in  
 36 the wholesale acquisition cost of a prescription drug above a specified

1 threshold; and

2 (6) "Rebate" means:

3 (A) A negotiated price concession, including without  
 4 limitation base price concessions, whether described as a rebate or not,  
 5 reasonable estimates of any price protection rebates, and performance-based  
 6 price concessions that may accrue, directly or indirectly, to the healthcare  
 7 insurer during the coverage year from a manufacturer or other party in  
 8 connection with the dispensing or administration of a prescription drug; and

9 (B) Any reasonable estimate of a negotiated price  
 10 concession, fee, and other administrative cost that is passed through, or is  
 11 reasonably anticipated to be passed through, to the healthcare insurer and  
 12 serves to reduce the healthcare insurer's liabilities for a prescription  
 13 drug.

14  
 15 23-79-2403. Implementation of subchapter – Requirements.

16 (a) An enrollee's defined cost sharing for a prescription drug shall  
 17 be calculated at the point-of-sale based on a price that is reduced by an  
 18 amount equal to at least one hundred percent (100%) of all rebates received,  
 19 or to be received, in connection with the dispensing or administration of the  
 20 prescription drug.

21 (b) This subchapter shall not preclude a healthcare insurer from  
 22 decreasing an enrollee's defined cost sharing by an amount greater than that  
 23 required under subsection (a) of this section.

24 (c) In implementing the requirements of this section, the state shall  
 25 only regulate a healthcare insurer to the extent permissible under applicable  
 26 law.

27 (d)(1) In complying with this section, a healthcare insurer or its  
 28 agents shall not publish or otherwise reveal information regarding the actual  
 29 amount of rebates a healthcare insurer receives on a product or therapeutic  
 30 class of products, manufacturer, or pharmacy-specific basis.

31 (2) The information described in subdivision (d)(1) of this  
 32 section is:

33 (A) Protected as a trade secret;

34 (B) Considered proprietary and confidential under § 23-61-  
 35 107(a)(4) and § 23-61-207;

36 (C) Not subject to disclosure under the Freedom of

1 Information Act of 1967, § 25-19-101 et seq.; and

2 (D) Not to be disclosed:

3 (i) Directly or indirectly; or

4 (ii) In a manner that would:

5 (a) Allow for the identification of an  
 6 individual product, therapeutic class of products, or manufacturer; or

7 (b) Have the potential to compromise the  
 8 financial, competitive, or proprietary nature of the information.

9 (3) A healthcare insurer shall impose the confidentiality  
 10 protections of this section on any vendor or downstream third party that  
 11 performs healthcare or administrative services on behalf of the healthcare  
 12 insurer that may receive or have access to rebate information.

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 14 SECTION 2. Arkansas Code Title 23, Chapter 92, is amended to add an  
 15 additional subchapter to read as follows:

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 17 Subchapter 7 – Arkansas Pharmacy Benefits Manager Share the Savings Act

18  
 19 23-92-701. Title.

20 This subchapter shall be known and may be cited as the "Arkansas  
 21 Pharmacy Benefits Manager Share the Savings Act".

22  
 23 23-92-702. Purpose.

24 The purpose of this subchapter is to require pharmacy benefits managers  
 25 to share the benefit of rebates with enrollees in this state.

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 27 23-92-703. Definitions.

28 As used in this subchapter:

29 (1) "Defined cost sharing" means a deductible payment or  
 30 coinsurance amount imposed on an enrollee for a covered prescription drug  
 31 under the enrollee's health benefit plan;

32 (2) "Enrollee" means an individual entitled to coverage of  
 33 healthcare services from a healthcare insurer;

34 (3)(A) "Health benefit plan" means any individual, blanket, or  
 35 group plan, policy, or contract for healthcare services issued or delivered  
 36 by a healthcare insurer in this state.

1 (B) "Health benefit plan" does not include:

2 (i) Accident-only plans;

3 (ii) Specified disease plans;

4 (iii) Disability income plans;

5 (iv) Plans that provide only for indemnity for  
 6 hospital confinement;

7 (v) Long-term-care-only plans that do not include  
 8 pharmacy benefits;

9 (vi) Other limited-benefit health insurance policies  
 10 or plans;

11 (vii) Health benefit plans provided under Arkansas  
 12 Constitution, Article 5, § 32, the Workers' Compensation Law, § 11-9-101 et  
 13 seq., or the Public Employee Workers' Compensation Act, § 21-5-601 et seq.;  
 14 or

15 (viii) Any state or local governmental employee  
 16 plan;

17 (4) "Healthcare insurer" means an insurance company that is  
 18 subject to state law regulating insurance including without limitation a  
 19 health maintenance organization or a hospital and medical service  
 20 corporation;

21 (5) "Pharmacy benefits management service" means a service to:

22 (A) Negotiate the price of prescription drugs, including  
 23 negotiating and contracting for direct or indirect rebates, discounts, or  
 24 other price concessions;

25 (B) Manage any aspect of a prescription drug benefit,  
 26 including without limitation:

27 (i) Claims processing services;

28 (ii) The performance of drug utilization review;

29 (iii) The processing of drug prior authorization  
 30 requests;

31 (iv) The adjudication of appeals or grievances  
 32 related to a prescription drug benefit;

33 (v) Controlling the cost of covered prescription  
 34 drugs; or

35 (vi) The provision of services related to the  
 36 services described under this subdivision (5)(B);

1                   (C) Disburse or distribute rebates, manage or participate  
2 in incentive programs or arrangements for pharmacist services, negotiate or  
3 enter into contractual arrangements with pharmacists or pharmacies, or both,  
4 develop formularies, or employ advertising or promotional services;

5                   (D) Perform any other administrative, managerial,  
6 clinical, pricing, financial, reimbursement, or billing service; and

7                   (E) Perform any other services as the Insurance  
8 Commissioner may include by rule;

9                   (6)(A) "Pharmacy benefits manager" means a person, business, or  
10 entity that, pursuant to a written agreement with a healthcare insurer or  
11 health benefit plan, either directly or indirectly provides one (1) or more  
12 pharmacy benefits management services on behalf of the healthcare insurer or  
13 health benefit plan, and any agent, contractor, intermediary, affiliate,  
14 subsidiary, or related entity of the person, business, or entity that  
15 facilitates, provides, directs, or oversees the provision of the pharmacy  
16 benefits management service or services.

17                   (B) "Pharmacy benefits manager" does not include a:

18                   (i) Healthcare facility licensed in Arkansas;

19                   (ii) Healthcare professional licensed in Arkansas;

20 or

21                   (iii) Consultant who only provides advice as to the  
22 selection or performance of a pharmacy benefits manager;

23                   (7) "Price protection rebate" means a negotiated price  
24 concession that accrues directly or indirectly to a healthcare insurer, or  
25 other party on behalf of the healthcare insurer, if there is an increase in  
26 the wholesale acquisition cost of a prescription drug above a specified  
27 threshold; and

28                   (8) "Rebate" means:

29                   (A) A negotiated price concession including without  
30 limitation base price concessions, whether described as a rebate or not,  
31 reasonable estimates of any price protection rebates, and performance-based  
32 price concessions that may accrue, directly or indirectly, to the healthcare  
33 insurer during the coverage year from a manufacturer or other party in  
34 connection with the dispensing or administration of a prescription drug; and

35                   (B) Any reasonable estimate of a negotiated price  
36 concession, fee, and other administrative cost that is passed through, or is

1 reasonably anticipated to be passed through, to the healthcare insurer and  
2 serves to reduce the healthcare insurer's liabilities for a prescription  
3 drug.

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5 23-92-704. Implementation of subchapter – Requirements.

6 (a) An enrollee's defined cost sharing for a prescription drug shall  
7 be calculated at the point-of-sale based on a price that is reduced by an  
8 amount equal to at least one hundred percent (100%) of all rebates received,  
9 or to be received, in connection with the dispensing or administration of the  
10 prescription drug.

11 (b) This subchapter shall not preclude a pharmacy benefits manager  
12 from decreasing an enrollee's defined cost sharing by an amount greater than  
13 that required under subsection (a) of this section.

14 (c)(1) A pharmacy benefits manager shall submit a certification to the  
15 Insurance Commissioner by January 1 of each calendar year certifying that the  
16 pharmacy benefits manager has complied with the requirements of this section  
17 during the previous calendar year.

18 (2) The certification under subdivision (c)(1) of this section  
19 shall be signed by the chief executive officer or chief financial officer of  
20 the pharmacy benefits manager.

21 (3) The form of the certification shall:

22 (A) Be in a format approved or established by the  
23 commissioner; and

24 (B) Include the pharmacy benefits manager's best estimate  
25 of the aggregate amount of rebates used to reduce enrollee-defined cost  
26 sharing for prescription drugs in the previous calendar year based on  
27 information known to the pharmacy benefits manager as of the date of the  
28 certification.

29 (d)(1) In complying with this section, a pharmacy benefits manager or  
30 its agents shall not publish or otherwise reveal information regarding the  
31 actual amount of rebates a pharmacy benefits manager receives on a product or  
32 therapeutic class of products, manufacturer, or pharmacy-specific basis.

33 (2) The information described in subdivision (d)(1) of this  
34 section is:

35 (A) Protected as a trade secret;

36 (B) Considered proprietary and confidential under § 23-61-

1 107(a)(4) and § 23-61-207;

2 (C) Not subject to disclosure under the Freedom of  
3 Information Act of 1967, § 25-19-101 et seq.; and

4 (D) Not to be disclosed:

5 (i) Directly or indirectly; or

6 (ii) In a manner that would:

7 (a) Allow for the identification of an  
8 individual product, therapeutic class of products, or manufacturer; or

9 (b) Have the potential to compromise the  
10 financial, competitive, or proprietary nature of the information.

11 (3) A pharmacy benefits manager shall impose the confidentiality  
12 protections of this section on any vendor or downstream third party that  
13 performs healthcare services or administrative services on behalf of the  
14 pharmacy benefits manager that may receive or have access to rebate  
15 information.

16  
17 SECTION 3. DO NOT CODIFY. Severability.

18 (a) In implementing this act, the state shall regulate a health  
19 benefit plan, healthcare insurer, or pharmacy benefits manager only to the  
20 extent permissible under applicable law.

21 (b)(1) The provisions of this act are severable.

22 (2) The invalidity of any provision of this act shall not affect  
23 other provisions of this act that can be given effect without the invalid  
24 provision.

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27 **APPROVED: 3/21/23**