

**EXECUTIVE SUMMARY**

ARKANSAS INSURANCE DEPARTMENT PROPOSED RULE 118

PHARMACY BENEFITS MANAGERS REGULATION

=====

To: Arkansas Legislative Council & Arkansas Bureau of Legislative Research

From: Booth Rand, Managing Attorney, Arkansas Insurance Department

CC: Alan McClain, Arkansas Insurance Commissioner; Steve Porch, General Counsel, Arkansas Department of Commerce; Russ Galbraith, Deputy Insurance Commissioner; Jim Brader, General Counsel; Jennifer Bruce, Public and Legislative Affairs Director

Date: June 7, 2022

=====

**LEGISLATIVE AUTHORITY FOR RULE**

This is proposed Rule 118, "Pharmacy Benefits Managers Regulation." We are filing this both as an emergency rule as well as a permanent rule.

This proposed rule is issued under the authority of Ark. Code Ann § 23-92-504(b)(1) in the Arkansas Pharmacy Benefits Manager Licensure Act, (hereafter, the "PBM Licensure Act") which authorizes the Arkansas Insurance Commissioner ("Commissioner") to issue rules to regulate the licensure and activities of pharmacy benefits managers ("PBMs"). The Commissioner is authorized to issue rules establishing the licensing, fees, application, financial standards, and reporting requirements of pharmacy benefits managers subject to the PBM Licensure Act. In addition, under Ark. Code Ann. § 23-92-509, the Commissioner is authorized to issue rules governing the financial solvency, network adequacy, maximum allowable cost practices, compensation, rebates and other matters as delineated in Ark. Code Ann. § 23-92-509 of pharmacy benefits managers subject to the PBM Licensure Act. Pursuant to Act 655 of 2021, the Commissioner is authorized to issue a rule on the Pharmacy Audit Bill of Rights. Finally, the Commissioner is authorized to issue Rules setting penalties or fines including monetary fines against pharmacy benefit managers under Ark. Code Ann. § 23-92-509(b)(1).

This Rule is also issued as an Emergency Rule. This Rule is also issued pursuant to the authority vested in the Commissioner to issue Emergency Rules under Ark. Code Ann. §25-15-204(c). Immediate adoption of this Rule is necessary to implement Act 665 of 2021 and to comply with court rulings on the applicability of the PBM Licensure Act to self-funded health plans related to maximum allowable cost and National Average Drug Acquisition Cost ("NADAC") reimbursement bulletins recently issued by the Department, and to provide updated licensing standards for PBMs conducting business in this State. It is hereby declared that the adoption of this Rule is necessary to prevent imminent peril to the health, safety or welfare of the citizens of this State.

**BACKGROUND AND PURPOSE OF RULE**

The purpose of this Rule is to help implement recent legislative changes to the PBM Licensure Act, in Act 665 of 2021, "An Act to Amend the Pharmacy Benefits Managers Act," which applies the Act

to self-funded employer plans, or healthcare payors for purposes of enforcement of the maximum allowable cost law.

#### **EXPLANATION OF THE PROPOSED RULE**

The proposed Rule provides the following changes:

- It implements Act 665 of 2021 applying our PBM laws related to maximum allowable cost to self-funded employer plans consistent with a Supreme Court decision in Rutledge vs. PCMA.
- It restates and applies the Pharmacy Audit bill of rights from Act 665 to protect pharmacies from arbitrary PBM audits.
- It establishes PBM compensation review if pharmacies are impacted by reimbursement when 10% are reduced in participation.
- It cleans up obsolete language no longer necessary in the rule.
- It adopts recently issued bulletins in the Rule itself which improve invoice processing in maximum allowable cost appeals.
- It adopts the Act 665 of 2021 network adequacy standards for pharmacies.