

**Act 1486 (HB1989) APPROVED: 4/15/1999**

By: Representative Teague

**For An Act To Be Entitled "AN ACT TO REQUIRE EQUITY IN PRESCRIPTION DRUG BENEFITS; AND FOR OTHER PURPOSES."**

**Subtitle "THE PRESCRIPTION DRUG BENEFIT EQUITY ACT."**

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

**SECTION 1.** Arkansas Code 17-92-401 is amended to read as follows: "17-92-401. Applicability to out-of-state operations.

(a) Any pharmacy operating outside the state which routinely ships, mails, or delivers in any manner a dispensed legend drug into Arkansas shall hold a pharmacy license issued by the Arkansas State Board of Pharmacy, and that part of the pharmacy operation dispensing the prescription for an Arkansas resident shall abide by Arkansas law and regulations of the board.

(b)

(1) Any pharmacy operating outside the state which routinely ships, mails, or delivers in any manner a dispensed legend drug into Arkansas shall be required to have *on staff* in the out-of-state pharmacy an Arkansas licensed pharmacist, who shall be designated the pharmacist-in-charge for the Arkansas out-of-state pharmacy license.

(2) If the out-of-state pharmacy fails to have *on staff* an Arkansas licensed pharmacist due to extended illness, death, resignation, or for any other reason, the pharmacy shall, within ten (10) calendar days, notify the Board of Pharmacy of the fact and must, within thirty (30) calendar days, or such additional time at the discretion of the board not to exceed thirty (30) calendar days, either secure the services of an Arkansas licensed pharmacist or cease to operate as a pharmacy in the State of Arkansas.

(c) An out-of-state pharmacy which ships, mails, or delivers in any manner a dispensed legend drug into Arkansas shall designate an agent, who is a resident of Arkansas, for service of process and register such agent with the Secretary of State.

(d) If under investigation for violation of Chapter 92, Title 17 of the Arkansas Code, an out-of-state pharmacy shall be required to appear before the board to respond to questions concerning such investigation.

(e) The board shall have all the powers to enforce this section as are granted to the board under Chapter 92, Title 17 of the Arkansas Code."

**SECTION 2.** Chapter 79 of Title 23 of the Arkansas Code is amended by adding the following new section to be numbered by the Arkansas Code Revision Commission: "Prescription Drug Benefits.

(a) As used in this section, ~~insurance policy~~ means any individual, group, or blanket policy, contract, or evidence of coverage written, issued, amended, delivered, or renewed in this state, or which provides such insurance for residents of this state, by an insurance company, hospital medical corporation, or health maintenance organization.

(b) No insurance company, hospital medical corporation, or health maintenance organization issuing insurance policies in this state shall contract with a pharmacist, pharmacy, pharmacy distributor or wholesale drug distributor, nonresident or otherwise to provide benefits under such insurance *policies for the shipment or delivery of a dispensed legend drug into the State of Arkansas*, unless such pharmacist, pharmacy or distributor has been granted a license or permit from the Arkansas State Board of Pharmacy to operate in the State of Arkansas.

(c)

(1) *Each* insurance policy shall apply the same coinsurance, co-payment and deductible factors to *covered* drug prescriptions filled by a pharmacy provider who participates in the insurance policy's network if the provider meets the contract's explicit product cost determination.

(2) Nothing in this subsection (c) shall be construed to prohibit the insurance policy from applying different coinsurance, copayment and deductible factors between *and among* generic and brand name drugs.

(d) Insurance policies shall not set a limit on the quantity of drugs which an enrollee may obtain at any

one time with a prescription, unless such limit is applied uniformly to all pharmacy providers in the insurance policy's network.

(e)

(1) For the purpose of this subsection (e), maintenance drug means a drug prescribed by a practitioner who is licensed to prescribe drugs and used to treat a medical condition for a period greater than thirty (30) days.

(2) Insurance policies shall not insist or mandate any provider to change an enrollee's maintenance drug unless the prescribing provider and enrollee agree to such change.

(3) Notwithstanding other provisions of law to the contrary, insurance policies that change an enrollee's maintenance drug without the consent of the provider and enrollee shall be liable to the provider or enrollee or both for any damages resulting from such change.

*(f) The commissioner shall enforce the provisions of this section and shall impose and collect a penalty of one thousand dollars (\$1,000) for the first violation of this section and a penalty of five thousand dollars (\$5,000) for each subsequent violation of this section. In addition, the commissioner shall have all the powers to enforce this section as are granted to the commissioner elsewhere in the Arkansas Insurance Code, beginning at § 23-60-101.*

*(g) The commissioner shall have all the powers to enforce this section, including, but not limited to, ensuring that the different coinsurance, copayment and deductible factors applicable between and among generic and brand name drugs are reasonable, as are granted to the commissioner elsewhere in the Arkansas Insurance Code, beginning at § 23-60-101."*

**SECTION 3.** All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

**SECTION 4.** If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

**SECTION 5.** All laws and parts of laws in conflict with this act are hereby repealed.