

**SUMMARY**

ARKANSAS INSURANCE DEPARTMENT PROPOSED RULE 107

REBATE & SPREAD PRICING REPORTS

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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; Margorie Farmer, Director PBM

Date: June 26, 2020

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**LEGISLATIVE AUTHORITY FOR RULE**

The proposed Rule implements Ark. Code Ann. § 23-92-505(b) which requires the Insurance Commissioner to collect from pharmacy benefit managers (“PBMs”) various rebate and spread pricing data in pharmaceutical coverage administration for health plans. As the proposed rule explains: “This Rule is issued pursuant to Ark. Code Ann. § 23-92-505 which requires pharmacy benefit managers (“PBMs”) to report to the Arkansas Insurance Commissioner (“Commissioner”) various information items in quarterly reports pertaining to rebates and spread pricing activities of PBMs. The Commissioner is authorized to issue this Rule under Ark. Code Ann. § 23-92-509 which permits the Commissioner to issue rules relating to rebates and compensation under Ark. Code Ann. § 23-92-509(a)(2)(H) and Ark. Code Ann. § 23-92-509(a)(2)(I), respectively. In addition, the Commissioner is authorized to issue rules pertaining to data reporting under Ark. Code Ann. § 23-92-509(a)(2)(F) and otherwise authorized to issue any rule not inconsistent with the “Arkansas Pharmacy Benefits Manager Licensure Act of 2018,” (hereafter, “the PBM Licensure Act”) as recently amended by Arkansas Act 994 of 2019, “An Act To Clarify The State Insurance Department’s Regulatory And Enforcement Authority Concerning Pharmacy Benefits Managers.”

**BACKGROUND AND PURPOSE OF RULE**

Under Act 994 of 2019, the Legislature wants AID to collect PBM rebate and spread pricing activities of PBMs to review cost savings issues from re-pricing and rebates, to improve costs savings in RX, increase transparency, potentially capture rebates in state funded health plans to reduce rates, and to potentially improve pharmacy reimbursement disparities. Act 994 tasks the Insurance Commissioner to collect this information on a quarterly basis. AID has prepared two exhibits, attached to the proposed rule, which are intended to require the PBMs to submit this data electronically, consistent with those forms. The proposed rule also requires various certifications to be made by officers of PBMs and health insurers affirming that they are not engaged in any violations of spread pricing Ark. Code Ann. § 23-92-505(c). In addition, subject PBMs are required to explain in sufficient detail, explaining how the aggregate amount of rebates passed on to the enrollees of each healthcare insurer at the point of sale that reduced the enrollees applicable deductible, copayment, coinsurance, or other cost-sharing amount(s) for healthcare insurer or HMO issued policies or contracts in the previous plan year.

