

Arkansas Insurance Department

Asa Hutchinson
Governor



Alan McClain
Commissioner

May 11, 2020

BULLETIN NO. 24-2020

TO: ALL LICENSED INSURERS, HEALTH MAINTENANCE ORGANIZATIONS (HMOs), PHARMACY BENEFIT MANAGERS, FRATERNAL BENEFIT SOCIETIES, FARMERS' MUTUAL AID ASSOCIATIONS OR COMPANIES, HOSPITAL MEDICAL SERVICE CORPORATIONS, NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, PRODUCER AND COMPANY TRADE ASSOCIATIONS, AND OTHER INTERESTED PARTIES

FROM: ARKANSAS INSURANCE DEPARTMENT

SUBJECT: COVID-19 EMERGENCY BULLETIN AFFECTING PHARMACY BENEFIT MANAGERS AND PHARMACY SERVICES

The Arkansas Insurance Commissioner is issuing this Bulletin to assist consumers with insurance policies affected by the outbreak of the COVID-19 virus in Arkansas, providers of health services attempting to treat and contain the outbreak, and entities regulated by the Arkansas Insurance Department as they deal with urgent needs caused by the occurrence of the virus in Arkansas.

The Arkansas Insurance Department is committed to assisting its fellow state agencies, local health departments, emergency managers, and health care providers in providing for the health and welfare of the people of Arkansas.

On May 5, 2020, Governor Asa Hutchinson issued Executive Order 20-25 declaring a statewide state of emergency for the purpose of extending the public health and disaster emergency and declaration of the State of Arkansas as a disaster area resulting from the state-wide impact of COVID-19 an additional forty-five (45) days from the issuance of EO 20-25.

The Order may impact various insurance regulatory statutes so that the Department may effectively render maximum assistance to overcome any potential impediment to the rapid and orderly rendering of assistance to our citizens affected by the virus.

RANDOM AUDITS OF PHARMACISTS SUSPENDED

Recognizing that pharmacists are an important part of the allied health response to mitigate the spread of COVID-19 and assist with the treatment and therapy of those testing positive for the virus, the Commissioner believes random in-person or "desk" audits of pharmacies by pharmacy benefit managers (PBMs) or health carriers is an impediment to the rendering of assistance to our citizens affected by the virus.

Therefore, the Commissioner directs PBMs licensed to do business in Arkansas and all health insurance carriers offering health insurance plans, including short-term limited-duration insurance plans, regulated by the Department to **suspend random audits (including, but not limited to in-person or “desk” audits) of pharmacies** during the 45-day period beginning with the date Executive Order 20-25 was issued.

This directive does not apply to cases where fraud is suspected.

CONSUMER SIGNATURE REQUIREMENT SUSPENDED

Recognizing that pharmacists are an important part of the allied health response to mitigate the spread of COVID-19 and assist with the treatment and therapy of those testing positive for the virus, and to limit the possible exposure of consumers and pharmacy staff to the COVID-19 virus through the use of shared writing implements or common use of tablet surfaces, the Commissioner determines the requirement that consumers sign for their pharmacist services is an impediment to the rendering of assistance to our citizens affected by the virus.

Therefore, the Commissioner directs PBMs licensed to do business in Arkansas and all health insurance carriers offering health insurance plans, including short-term limited-duration insurance plans, regulated by the Department to **suspend the requirement that pharmacy plan beneficiaries sign for the rendering of pharmacy services** during the 45-day period beginning with the date Executive Order 20-25 was issued.

For the purposes of the Bulletin, “pharmacy services” is defined as it is in Ark. Code Ann. § 23-92-503(6), which states:

“Pharmacist services’ means products, goods, and services, or any combination of products, goods, and services, provided as a part of the practice of pharmacy as defined in § 17-92-101;”

PBMS AND PRICE GOUGING

EO 20-25 triggered the provisions of Act 376 of 1997 prohibiting businesses from price gouging during a state of emergency. The law prohibits businesses from charging more than 10 percent above the pre-disaster price of goods or services. The ban on price gouging remains in effect for at least 30 days from the issuance of the Executive Order.

Pharmacy Benefit Managers ought to monitor manufacturer and wholesaler pricing to ensure consumers have sufficient access to products during the emergency. The Department asks Pharmacy Benefit Managers to confirm price increases with the Department when they occur.

The Department will then collaborate with the Attorney General to resolve price gouging in this market.

Any questions regarding this Bulletin should be directed to insurance.legal@arkansas.gov at the Arkansas Insurance Department or by phone at 501-371-2600.



ALAN MCCLAIN
INSURANCE COMMISSIONER
STATE OF ARKANSAS

May 11, 2020

DATE