



Michael Preston
SECRETARY OF COMMERCE

Alan McClain
COMMISSIONER,
ARKANSAS INSURANCE
DEPARTMENT

BULLETIN #: 11-2022

TO: ALL LICENSED PHARMACY BENEFIT MANAGERS (“PBMs”)
FROM: ARKANSAS INSURANCE DEPARTMENT
DATE: SEPTEMBER 20, 2022
RE: NADAC REIMBURSEMENT VIOLATIONS IN ORIGINATING PBM REIMBURSEMENT CONTRACTS

This Bulletin is directed to all PBMs licensed by the Arkansas Insurance Department (“Department”). Historically, the Department has reviewed failure to reimburse to national average drug acquisition cost (“NADAC”) complaints on an individual per claim basis, after adjudication, and not at the inception of the execution of the contract. However, the Commissioner has observed that some reimbursement contracts between pharmacists and PBMs contain reimbursement language that potentially violates Arkansas’s reimbursement laws and has determined that national average drug acquisition cost (“NADAC”) and maximum allowable cost (“MAC”) should be addressed before execution of such contracts rather than after point of sale transactions.

Arkansas pharmacies have advised the Department that proposed contracts offered by PBMs to pharmacies include proposed reimbursement formulas based on Average Wholesale Price (“AWP”) or Wholesale Acquisition Cost (“WAC”) calculations that already project reimbursement payments on branded drugs will be less than NADAC.

The Commissioner refers the PBM industry to Ark. Code Ann. § 23-92-506(b)(5)(A) which provides that a PBM shall not:

“Pay or reimburse a pharmacy or pharmacist for the ingredient drug product component of pharmacist services less than the national average drug acquisition cost or, if the national average drug acquisition cost is unavailable, the wholesale acquisition cost.”

This statute does not address when NADAC reimbursement payments should be reviewed for compliance with that section. However, the Commissioner advises the PBM industry to take affirmative steps to ensure that all proposed WAC or AWP calculations on branded drugs in reimbursement contracts conform to NADAC payment minimums on the front end of the contract. Taking these actions may help reduce the number of NADAC complaints the Department currently has to process following execution of the originating reimbursement contract.

The Commissioner encourages PBMs to avoid “take it or leave it” proposed reimbursement terms on this issue. The Commissioner also encourages PBMs to actively respond, communicate, and adjust to pharmacy concerns expressed during negotiations when proposed payment calculations appear to project payments below NADAC minimums. Alternatively, the Commissioner suggests that a PBM provide a stipulation clause in its pharmacy reimbursement contracts which provides that, in the event that a WAC or AWP calculation on a branded drug results in a payment below NADAC, the PBM shall at least pay the NADAC amount at the time of adjudication of a prescription drug claim.

The Commissioner reminds the licensed PBM industry that the PBM compensation programs with pharmacies must be “fair and reasonable” under Ark. Code Ann. § 23-92-506(a). The Commissioner believes these standards are compromised when proposed reimbursement terms are presented on a “take it or leave it” basis and already project payments below the statutory NADAC minimum.

Please direct any questions or inquiries pertaining to this Bulletin, to Ms. Beth Barrington, AID PBM Director at (501) 683-6587.



ALAN McCLAIN
INSURANCE COMMISSIONER
STATE OF ARKANSAS

9-20-2022
DATE