



Hugh McDonald
SECRETARY OF COMMERCE

Alan McClain
COMMISSIONER,
ARKANSAS INSURANCE
DEPARTMENT

BULLETIN NO. 8-2024

TO: All Licensed Pharmacy Benefits Managers
FROM: Arkansas Insurance Department – PBM Division
DATE: June 28, 2024
RE: PBM Reimbursement(s) At NADAC Minimum Levels

The Arkansas Insurance Commissioner (“Commissioner”) issues this advisory Bulletin to all Arkansas Insurance Department (“AID”) licensed pharmacy benefits managers (“PBMs”) related to PBM reimbursements to pharmacies at minimum levels to NADAC pricing amounts under Ark. Code Ann. § 23-92-506(b)(5)(A).

The Commissioner issues this advisory to PBMs related to PBM pharmacy compensation pertaining to reimbursement to NADAC minimum levels under Ark. Code Ann. § 23-92-506(b)(5)(A). The AID PBM division has now received several complaints from pharmacies against PBMs in which a PBM has reversed a payment to reduce or to remove a dispensing fee in the pharmacy’s compensation to equalize the payment to NADAC minimum pricing.

Ark. Code Ann. § 23-92-506(b)(5)(A) provides that a pharmacy benefits manager or representative of a pharmacy benefits manager shall not...:

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

First, the above statutory language clearly does not permit for the removal or the reduction of previously agreed to payments between the PBM and the pharmacy, or through its Pharmacy Services Administrative Organizations (“PSAO”), of compensation agreements related to dispensing fees, unrelated to the ingredient costs of the drug, if such were already permitted to be paid by contract.

Second, and more importantly, the above provision, and this same principle applies to maximum allowable cost minimums (“MAC”) were never intended to replace, void or supersede the previously agreed to commercially contracted rates that may result in pharmacy compensation ABOVE NADAC minimum levels. (emphasis added). The above statutory minimums were never intended to replace the commercially agreed to rates other than to provide a reimbursement floor or **safety net** below which such commercial rates may not go below. (emphasis added) Finally, the PBMs need to be mindful of the provision in Ark. Code Ann. § 23-92-506(a)(1) which states that “the Commissioner may review a PBM’s compensation program to determine if it is fair and reasonable to “provide an adequate network for a health benefit plan.” The Commissioner has not


yet defined this phrase, but, at this time, is very doubtful this standard is met or satisfied with compensation at NADAC minimums.

For PBMs wanting to adhere to a strict reading of the above provisions that such provisions have replaced any previously agreed to rates resulting in payments above NADAC or MAC, the Commissioner advises that unless the PBMs desire the Commissioner to begin to review pharmacy and PBM compensation agreements, the Commissioner urges the PBM industry to understand that the above NADAC and MAC laws were intended to be **safety net** minimums ONLY and not a replacement to supersede agreed to rates that result in payments above NADAC or MAC. (emphasis added) PBMs are advised to improve their compensation rates above strict NADAC minimums to help us better insure the continued operation of pharmacy networks for health plans in this State.

For questions related to this Bulletin, please direct all inquiries to Booth Rand, General Counsel at AID, at (501) 371-2820 or email insurance.legal@arkansas.gov.



Alan McClain
Arkansas Insurance Commissioner



Date