

Stricken language would be deleted from and underlined language would be added to present law.

1 State of Arkansas  
2 93rd General Assembly  
3 Regular Session, 2021  
4

As Engrossed: H3/4/21

# A Bill

HOUSE BILL 1569

5 *By: Representatives Lundstrum, Barker, Boyd, Bragg, Brown, C. Cooper, Evans, Furman, D. Garner,*  
6 *Gazaway, Haak, Hawks, Lowery, Maddox, Murdock, Penzo, Pilkington, Ray, Scott, S. Smith, Watson, D.*  
7 *Whitaker, Wing, Wooten*  
8 *By: Senators Rapert, L. Chesterfield, Gilmore, M. Johnson, Teague*

## For An Act To Be Entitled

11 AN ACT TO ESTABLISH THE ARKANSAS FAIRNESS IN COST  
12 SHARING ACT; AND FOR OTHER PURPOSES.

### Subtitle

16 TO ESTABLISH THE ARKANSAS FAIRNESS IN  
17 COST SHARING ACT.

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

22 SECTION 1. TEMPORARY LANGUAGE. DO NOT CODIFY. Legislative findings  
23 and intent.

24 (a) The General Assembly finds that:

25 (1) Arkansans frequently rely on state-regulated commercial  
26 insurers to secure access to the prescription drugs needed to protect their  
27 health;

28 (2) Commercial insurance designs increasingly require a patient  
29 to bear significant out-of-pocket costs for the patient's prescription drugs;

30 (3) High out-of-pocket costs on prescription drugs affect the  
31 ability of patients to start new and necessary prescription drugs and to  
32 adhere to their current prescription drugs regimen;

33 (4) High or unpredictable cost-sharing requirements are a main  
34 driver of elevated out-of-pocket costs for patients and allow insurers to  
35 capture and divert rebates, discounts, and price concessions that are  
36 intended to benefit patients at the pharmacy counter;



1           (5) Insurers unfairly increase cost-sharing burdens on patients  
2 by refusing to count third-party assistance toward a patient's cost-sharing  
3 contributions;

4           (6) The burdens of high or unpredictable cost-sharing  
5 requirements are borne disproportionately by patients with chronic or  
6 debilitating medical conditions;

7           (7) It is necessary to restrict the ability of insurers and  
8 their intermediaries to use unfair cost-sharing design to retain rebates,  
9 discounts, and price concessions that instead should be directly passed on to  
10 patients as cost savings at the point of sale of prescription drugs; and

11           (8) Patients need equitable and accessible health coverage that  
12 does not impose unfair cost-sharing burdens upon them.

13           (b) It is the intent of the General Assembly to ensure that a state-  
14 regulated insurer and the entities that contract with the state-regulated  
15 insurer do not restrict patient access to prescription drugs by refusing to  
16 count third-party cost-sharing assistance toward a patient's cost-sharing  
17 obligations, a practice that is detrimental to the consumer.

18  
19           SECTION 2. Arkansas Code Title 23, Chapter 79, is amended to add an  
20 additional subchapter to read as follows:

21           Subchapter 21 – Arkansas Fairness in Cost Sharing Act

22  
23           23-79-2101. Title.

24           This subchapter shall be known and may be cited as the "Arkansas  
25 Fairness in Cost Sharing Act".

26  
27           23-79-2102. Definitions.

28           As used in this subchapter:

29           (1) "Cost-sharing requirement" means a copayment, coinsurance,  
30 deductible, or annual limitation on cost sharing, including without  
31 limitation a limitation subject to the Patient Protection and Affordable Care  
32 Act, Pub. L. No. 111-148, that is required by or on behalf of an enrollee in  
33 order to receive a specific healthcare service, including a prescription  
34 drug, covered by a health benefit plan;

35           (2) "Enrollee" means an individual entitled to healthcare  
36 services from a healthcare insurer;

1           (3)(A) "Health benefit plan" means any individual, blanket, or  
2 group plan, policy, or contract for healthcare services issued or delivered  
3 by a healthcare insurer in this state.

4           (B) "Health benefit plan" does not include:

5                   (i) Accident-only plans;

6                   (ii) Specified disease plans;

7                   (iii) Disability income plans;

8                   (iv) Plans that provide only for indemnity for  
9 hospital confinement;

10                   (v) Long-term-care-only plans that do not include  
11 pharmacy benefits;

12                   (vi) Other limited-benefit health insurance policies  
13 or plans;

14                   (vii) Health benefit plans provided under Arkansas  
15 Constitution, Article 5, § 32, the Workers' Compensation Law, § 11-9-101 et  
16 seq., and the Public Employee Workers' Compensation Act, § 21-5-601 et seq.;  
17 or

18                   (viii) A plan that provides only dental benefits or  
19 eye and vision care benefits;

20           (4)(A) "Healthcare insurer" means an insurance company that is  
21 subject to state law regulating insurance and offers health insurance  
22 coverage under 42 U.S.C. § 300gg-91, as it existed on January 1, 2021, a  
23 health maintenance organization, or a hospital and medical service  
24 corporation.

25                   (B) "Healthcare insurer" does not include an entity that  
26 provides only dental benefits or eye and vision care benefits;

27           (5) "Healthcare service" means an item or service provided to an  
28 individual for the purpose of preventing, alleviating, curing, or healing  
29 illness, injury, or physical disability; and

30           (6) "Person" means a natural person, corporation, mutual  
31 company, unincorporated association, partnership, joint venture, limited  
32 liability company, trust, estate, foundation, not-for-profit corporation,  
33 unincorporated organization, government, or governmental subdivision or  
34 agency.

35  
36           23-79-2103. Fairness in cost sharing.

1 (a) When calculating an enrollee's contribution to any applicable  
2 cost-sharing requirement, a healthcare insurer shall include any cost-sharing  
3 amounts paid by the enrollee or on behalf of the enrollee by another person.

4 (b)(1) Except as provided in subdivision (b)(2) of this section, this  
5 section applies to a health benefit plan that is entered into, amended,  
6 extended, or renewed on or after January 1, 2022.

7 (2)(A) Benefits offered through a health benefit plan under the  
8 Evidenced-Based Prescription Drug Program of the College of Pharmacy of the  
9 University of Arkansas Medical Sciences shall satisfy the requirements of  
10 this act beginning on and after January 1, 2024, if the Insurance  
11 Commissioner reports a failure to comply with this section to the Legislative  
12 Council.

13 (B)(i) Beginning on January 1, 2022, the Director of the  
14 Evidenced-Based Prescription Drug Program of the College of Pharmacy of the  
15 University of Arkansas Medical Sciences shall report quarterly to the  
16 commissioner, Arkansas Legislative Audit, and the Legislative Council  
17 concerning details of plan savings and how the process that is used benefits  
18 an enrollee and the offered plan.

19 (ii) The report described in subdivision  
20 (b)(2)(B)(i) of this section shall include the amount of enrollee savings,  
21 plan-specific data on the amount of manufacturer rebates received, and how  
22 the manufacturer rebates were applied in each plan for which the program is  
23 contracted to administer a prescription drug benefit.

24 (c) The General Assembly intends for this section to regulate a  
25 healthcare insurer only to the extent permissible under applicable law.

26  
27 23-79-2104. Rules

28 (a) The Insurance Commissioner shall promulgate rules necessary to  
29 carry out this subchapter.

30 (b) The rules promulgated under this section shall require a  
31 healthcare insurer and the Director of the Evidenced-Based Prescription Drug  
32 Program of the College of Pharmacy of the University of Arkansas Medical  
33 Sciences to submit to the commissioner plan-specific information related to  
34 savings and accountability to document how enrollees are realizing a cost  
35 savings under each plan.

36

1 SECTION 3. Arkansas Code Title 23, Chapter 92, Subchapter 5, is  
2 amended to add an additional section to read as follows:

3 23-92-511. Fairness in cost sharing – Definitions.

4 (a) As used in this section:

5 (1) "Cost-sharing requirement" means a copayment, coinsurance,  
6 deductible, or annual limitation on cost sharing, including without  
7 limitation a limitation subject to the Patient Protection and Affordable Care  
8 Act, Pub. L. No. 111-148, that is required by or on behalf of an enrollee in  
9 order to receive a specific healthcare service, including a prescription  
10 drug, covered by a health benefit plan;

11 (2) "Enrollee" means an individual entitled to healthcare  
12 services from a healthcare insurer;

13 (3)(A) "Healthcare insurer" means an insurance company that is  
14 subject to state law regulating insurance and offers health insurance  
15 coverage under 42 U.S.C. § 300gg-91, as it existed on January 1, 2021, a  
16 health maintenance organization, or a hospital and medical service  
17 corporation.

18 (B) "Healthcare insurer" does not include an entity that  
19 provides only dental benefits or eye and vision care benefits;

20 (4) "Healthcare service" means an item or service provided to an  
21 individual for the purpose of preventing, alleviating, curing, or healing  
22 human illness, injury, or physical disability; and

23 (5) "Person" means a natural person, corporation, mutual  
24 company, unincorporated association, partnership, joint venture, limited  
25 liability company, trust, estate, foundation, not-for-profit corporation,  
26 unincorporated organization, government, or governmental subdivision or  
27 agency.

28 (b) When calculating an enrollee's contribution to any applicable  
29 cost-sharing requirement, a pharmacy benefits manager shall include any cost-  
30 sharing amounts paid by the enrollee or on behalf of the enrollee by another  
31 person.

32 (c)(1) Except as provided in subdivision (c)(2) of this section, this  
33 section applies to a health benefit plan that is entered into, amended,  
34 extended, or renewed on or after January 1, 2022.

35 (2)(A) Benefits offered through a health benefit plan under the  
36 Evidenced-Based Prescription Drug Program of the College of Pharmacy of the

1 University of Arkansas Medical Sciences shall satisfy the requirements of  
2 this act beginning on and after January 1, 2024, if the Insurance  
3 Commissioner reports a failure to comply with this section to the Legislative  
4 Council.

5 (B)(i) Beginning on January 1, 2022, the Director of the  
6 Evidenced-Based Prescription Drug Program of the College of Pharmacy of the  
7 University of Arkansas Medical Sciences shall report quarterly to the  
8 commissioner, Arkansas Legislative Audit, and the Legislative Council  
9 concerning details of plan savings and how the process that is used benefits  
10 an enrollee and the offered plan.

11 (ii) The report described in subdivision  
12 (c)(2)(B)(i) of this section shall include the amount of enrollee savings,  
13 plan-specific data on the amount of manufacturer rebates received, and how  
14 the manufacturer rebates were applied in each plan for which the program is  
15 contracted to administer a prescription drug benefit.

16 (d)(1) The commissioner shall promulgate rules necessary to carry out  
17 this section.

18 (2) The rules promulgated under this section shall require a  
19 healthcare insurer and the director to submit plan-specific information  
20 related to savings and accountability to document how enrollees are realizing  
21 a cost savings under each plan.

22 (e) The General Assembly intends for this section to regulate a  
23 healthcare insurer only to the extent permissible under applicable law.

24  
25 SECTION 4. TEMPORARY LANGUAGE. DO NOT CODIFY. Rules.

26 (a) The Insurance Commissioner shall promulgate rules necessary to  
27 implement this act.

28 (b)(1) When adopting the initial rules to implement this act, the  
29 final rule shall be filed with the Secretary of State for adoption under §  
30 25-15-204(f):

31 (A) On or before January 1, 2022; or

32 (B) If approval under § 10-3-309 has not occurred by  
33 January 1, 2022, as soon as practicable after approval under § 10-3-309.

34 (2) The commissioner shall file the proposed rule with the  
35 Legislative Council under § 10-3-309(c) sufficiently in advance of January 1,  
36 2022, so that the Legislative Council may consider the rule for approval

1 before January 1, 2022.

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*/s/Lundstrum*

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