



September 18, 2024

Members of the Arkansas Legislative Council Executive Subcommittee
Arkansas Legislature
1 Capitol Mall, Fifth Floor
Little Rock, AR 72201

Members of the ALC – Executive Committee –

Thank you for the opportunity to share the concerns of the members of the Pharmaceutical Care Management Association (PCMA) related to the emergency rule on dispensing fees proposed by the Governor and Arkansas Insurance Department set for hearing before your committee on September 19th.

PCMA is the national association representing pharmacy benefit managers (PBMs), and our members administer the prescription coverage for over 2.69 million Arkansans and serve families in the commercial, Medicaid, and public insurance markets, including your state employees. Our directive from our plan sponsors is to make sure Arkansas patients get the right drug, at the right time, for the most affordable cost. PBMs work every day, on behalf of the employers and plan sponsors of your state, to control the rising costs of prescriptions. In furtherance of our goal of keeping prescription costs as low as possible, we feel the need to raise the following concerns about the proposed emergency rules before you this week.

Current dispensing fees are determined by the free market and PBMs are paying “fair and reasonable” dispensing fees as dictated by the market. As you will see below, the proposed rule will create more uncertainty for patients, employers, and state-funded programs.

Emergency Rule 128 Will Raise Costs for Patients and Employers

Originally, **AID proposed a rule mandating a \$10.50 dispensing fee for each script in May. Early estimates of such an increase exceeded \$359,000,000 in the first year.** While that draft rule was withdrawn, it provides insight into the administration's expectations for setting these dispensing fees moving forward. AID's Fiscal Impact Statement for this rule estimates that the rule will cost the private market at least \$100,000 per year, but the administration fails to calculate how much it will increase costs. Unfortunately, the Fiscal Impact Statement also fails to calculate the cost increases the state government will face.

Health insurers and PBMs use premium dollars to help pay prescription claims. Any increase in expenditures will be paid for with increased premiums. For example, West Virginia recently increased their dispensing fee requirement and it cost the state plan an additional \$6.2 million in the first year. This too will increase prescription drug costs for everyone in Arkansas.



Emergency Rule 128 Does Not Fix AID's Complaint Problem

AID's rule justification is based on concerns and complaints by pharmacists related to NADAC reimbursement mandates and this proposed rule fails to address those concerns. Instead, it shifts focus to the dispensing fees pharmacies receive. Pharmacists' complaints will only increase with the adoption of this rule because the rule provides no certainty of what the AID feels is a "fair and reasonable" dispensing fee. Pharmacy complaints over what should be considered a "fair and reasonable" dispensing fee for private company contracts will only be added to any ongoing NADAC reimbursement complaints to the AID.

Emergency Rule 128 Will Empower AID with Unfettered Power Over Healthcare Costs

As stated above, the original proposal by the AID and the administration would be for a dispensing fee of \$10.50/prescription and would drive up costs for plan sponsors and patients by over \$359 million in the first year alone. However, a major concern about the proposed emergency rule is the lack of specificity regarding what the administration deems "fair and reasonable." The lack of definition of what a "fair and reasonable" rate will allow AID to arbitrarily set rates for individual health plans. This arbitrary determination by the AID could lead to discriminatory pricing structures between plans. It could **allow the administration to pick winners and losers** depending on who is paying for a prescription to be filled in Arkansas pharmacies.

Emergency Rule 128 Would Substantially Impair In-Force Contracts

Health plans and PBMs currently have contracts in place that this rule would substantially impair. If AID requires different dispensing fees for different health plan contracts, for example, it would be very difficult to comply with both those different contracts and the rule's uniformity requirement across all pharmacies. This type of mandate will not only increase costs, but it will also provide legal issues and confusion. None of this has been taken into account in this proposal.

Emergency Rule 128 Runs Afoul of Federal Law Meant to Reduce Employer Costs

Historically, multistate employers have relied on ERISA preemption to control healthcare costs by providing a uniform plan to all of their employees throughout the nation. This rule could undermine the goal of ERISA and require Arkansas employers to offer different or reduced benefits to employees living and working in your state. Arkansas took the fight over ERISA preemption all the way to the US Supreme Court and lost the ability to legislate benefit design for plan sponsors. This proposed rule attempts an end run around the ruling in *Rutledge*, and in doing so, could drive up costs for federally protected plan sponsors.

Emergency Rule 128 Subsidizes All Pharmacies and Won't Help Independents

Each year, PBMs are licensed by the AID and subject to network adequacy reviews. AID has not made PCMA aware of any gaps in pharmacy networks since the requirements took effect in 2018. Without showing inadequate pharmacy access, the administration argues that independent pharmacies are struggling financially and that they should be subsidized by a government mandate that will increase premiums.

Please keep in mind that **independent pharmacies still represent over 55% of the pharmacy market in Arkansas**, and their numbers have been stable over the last decade, while



chain pharmacies have seen an 11.6% decrease in pharmacies over that same time. If the administration increases any dispensing fee contracts pursuant to this proposal, it will be a subsidy for all pharmacies. Chain and “big-box” pharmacies will profit as much as independent pharmacies.

PCMA and our members view independent pharmacies as vital partners in providing prescription drug coverage in Arkansas. Allowing the free market to set dispensing fee rates encourages competition and innovation in pharmacy benefits. Emergency Rule 128 will give the administration and AID the power to set prices to subsidize one segment of the market at the expense of those paying for healthcare. We believe this emergency rule is unnecessary and should be vetted through the regular rulemaking process.

Sincerely,

A handwritten signature in blue ink, appearing to read "J.D. Buxton".

Jonathan D. Buxton
Senior Director, State Affairs