

**HOUSE Substitute for  
Substitute for SENATE BILL No. 422**

By Committee on Appropriations

5-4

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AN ACT concerning the department of social and rehabilitation services; relating to prescription drugs under the state medicaid program; providing for a state medicaid preferred drug formulary and an advisory committee therefor; medicaid drug utilization review board duties, procedures and composition; amending K.S.A. 39-7,118, 39-7,119 and 39-7,120 and K.S.A. 2001 Supp. 77-421 and repealing the existing sections.

*Be it enacted by the Legislature of the State of Kansas:*

New Section 1. (a) The secretary of social and rehabilitation services may establish an advisory committee pursuant to K.S.A. 75-5313, and amendments thereto, to advise the secretary in the development of a preferred formulary listing of covered drugs by the state medicaid program.

(b) The secretary of social and rehabilitation services shall evaluate drugs and drug classes for inclusion in the state medicaid preferred drug formulary based on safety, effectiveness and clinical outcomes of such treatments. In addition, the secretary shall evaluate drugs and drug classes to determine whether inclusion of such drugs or drug classes in a starter dose program would be clinically efficacious and cost effective. If the factors of safety, effectiveness and clinical outcomes among drugs being considered in the same class indicate no therapeutic advantage, then the secretary shall consider the cost effectiveness and the net economic impact of such drugs in making recommendations for inclusion in the state medicaid preferred drug formulary. Drugs which do not have a significant, clinically meaningful therapeutic advantage in terms of safety, effectiveness or clinical outcomes over other drugs in the same class which have been selected for the preferred drug formulary may be excluded from the preferred drug formulary and may be subject to prior authorization in accordance with state and federal law, except, prior to July 1, 2003, where a prescriber has personally written "dispense as written" or "D.A.W.", or has signed the prescriber's name on the "dispense as written" signature line in accordance with K.S.A. 65-1637, and amendments

1 thereto.

2 (c) The secretary of social and rehabilitation services shall consider  
3 the net economic impact of drugs selected or excluded from the preferred  
4 formulary and may gather information on the costs of specific drugs,  
5 rebates or discounts pursuant to 42 U.S.C. 1396r-8, dispensing costs, dos-  
6 ing requirements and utilization of other drugs or other medicaid health  
7 care services.

8 (d) The secretary of social and rehabilitation services may accept all  
9 services, including, but not limited to, disease state management, asso-  
10 ciated with the delivery of pharmacy benefits under the state medicaid  
11 program having a determinable cost effect in addition to the medicaid  
12 prescription drug rebates required pursuant to 42 U.S.C. section 1396r-  
13 8.

14 (e) The state medicaid preferred drug formulary shall be submitted  
15 to the medicaid drug utilization review board for review and policy  
16 recommendations.

17 New Sec. 2. No requirements for prior authorization or other re-  
18 strictions on medications used to treat mental illnesses such as schizo-  
19 phrenia, depression or bipolar disorder may be imposed on medicaid  
20 recipients. Medications that will be available under the state medicaid  
21 plan without restriction for persons with mental illnesses shall include  
22 atypical antipsychotic medications, conventional antipsychotic medica-  
23 tions and other medications used for the treatment of mental illnesses.

24 New Sec. 3. A prescription medication prescribed for a medicaid re-  
25 cipient or a person who becomes eligible for medicaid assistance shall not  
26 be subject to any requirement for prior authorization under the state  
27 medicaid plan unless (a) such prescription, including all authorized refills,  
28 has expired, or (b) the practitioner who prescribed the medication for  
29 such recipient prescribes a different medication.

30 New Sec. 4. (a) The state medicaid plan shall include provisions for  
31 a program of differential dispensing fees for pharmacies that provide pre-  
32 scriptions for adult care homes under a unit dose system in accordance  
33 with rules and regulations of the state board of pharmacy and that partic-  
34 ipate in the return of unused medications program under the state  
35 medicaid plan.

36 (b) The state medicaid plan shall include provisions for differential  
37 ingredient cost reimbursement of generic and brand name pharmaceu-  
38 ticals. The secretary of social and rehabilitation services shall set the rates  
39 for differential cost reimbursement of generic and brand name pharma-  
40 ceuticals by rules and regulations.

41 New Sec. 5. (a) Except where a prescriber has personally written  
42 "dispense as written" or "D.A.W.," or has signed the prescriber's name  
43 on the "dispense as written" signature line in accordance with K.S.A. 65-

1 1637 and amendments thereto, the secretary of social and rehabilitation  
2 services may limit reimbursement for a prescription under the medicaid  
3 program to the multisource generic equivalent drug.

4 (b) No pharmacist participating in the medical assistance program  
5 shall be required to dispense a prescription-only drug that will not be  
6 reimbursed by the medical assistance program.

7 Sec. 6. K.S.A. 39-7,118 is hereby amended to read as follows: 39-  
8 7,118. The secretary of social and rehabilitation services shall implement  
9 a drug utilization review program with the assistance of a medicaid drug  
10 utilization review board as provided in K.S.A. 39-7,119 and amendments  
11 thereto to assure the appropriate utilization of drugs by patients receiving  
12 medical assistance under the medicaid program. The drug utilization re-  
13 view program shall include:

14 (a) Monitoring of prescription information including overutilization  
15 and underutilization of prescription-only drugs;

16 (b) making periodic reports of findings and recommendations to the  
17 secretary of social and rehabilitation services and the United States de-  
18 partment of health and human services regarding the activities of the  
19 board, drug utilization review programs, summary of interventions, as-  
20 sessments of education interventions and drug utilization review cost  
21 estimates;

22 (c) providing for prospective and retrospective drug utilization re-  
23 view, as specified in the federal omnibus budget reconciliation act of 1990  
24 (public law 101-508);

25 (d) monitoring provider and recipient compliance with program  
26 objectives;

27 (e) providing educational information on state program objectives,  
28 directly or by contract, to private and public sector health care providers  
29 to improve prescribing and dispensing practices;

30 (f) reviewing the increasing costs of purchasing prescription drugs  
31 and making recommendations on cost containment; ~~and~~

32 (g) *reviewing profiles of medicaid beneficiaries who have multiple*  
33 *prescriptions above a level specified by the board; and*

34 (h) recommending any modifications or changes to the medicaid pre-  
35 scription drug program.

36 Sec. 7. K.S.A. 39-7,119 is hereby amended to read as follows: 39-  
37 7,119. (a) There is hereby created the medicaid drug utilization review  
38 board which shall be responsible for the implementation of retrospective  
39 and prospective drug utilization programs under the Kansas medicaid  
40 program.

41 (b) *Except as provided in subsection (i),* the board shall consist of at  
42 least seven members appointed as follows:

43 (1) Two licensed physicians actively engaged in the practice of med-

1 icine, nominated by the Kansas medical society and appointed by the  
2 secretary of social and rehabilitation services from a list of four nominees;

3 (2) one licensed physician actively engaged in the practice of osteo-  
4 pathic medicine, nominated by the Kansas association of osteopathic  
5 medicine and appointed by the secretary of social and rehabilitation serv-  
6 ices from a list of four nominees;

7 (3) two licensed pharmacists actively engaged in the practice of phar-  
8 macy, nominated by the Kansas pharmacy association and appointed by  
9 the secretary of social and rehabilitation services from a list of four  
10 nominees;

11 (4) one person licensed as a pharmacist and actively engaged in ac-  
12 ademic pharmacy, appointed by the secretary of social and rehabilitation  
13 services from a list of four nominees provided by the university of Kansas;

14 ~~and~~

15 (5) one licensed professional nurse actively engaged in long-term care  
16 nursing, nominated by the Kansas state nurses association and appointed  
17 by the secretary of social and rehabilitation services from a list of four  
18 nominees.

19 (c) The secretary of social and rehabilitation services may add two  
20 additional members so long as no class of professional representatives  
21 exceeds 51% of the membership.

22 (d) The physician and pharmacist members shall have expertise in  
23 the clinically appropriate prescribing and dispensing of outpatient drugs.

24 (e) The appointments to the board shall be for *terms of* three years;  
25 ~~except that for the initial appointments to the board one physician and~~  
26 ~~one pharmacist, as designated by the secretary of social and rehabilitation~~  
27 ~~services, shall be appointed for two years. Thereafter, all appointments~~  
28 ~~shall be for three years.~~ In making the appointments, the secretary of  
29 social and rehabilitation services shall provide for geographic balance in  
30 the representation on the board to the extent possible. *Subject to the*  
31 *provisions of subsection (i),* members may be reappointed.

32 (f) The board shall elect a chairperson from among board members  
33 who shall serve a one-year term. The chairperson may serve consecutive  
34 terms.

35 (g) The board, in accordance with K.S.A. 75-4319 and amendments  
36 thereto, may recess for a closed or executive meeting when it is consid-  
37 ering matters relating to identifiable patients or providers.

38 (h) *All actions of the medicaid drug utilization review board shall be*  
39 *upon the affirmative vote of five members of the board and the vote of*  
40 *each member present when action was taken shall be recorded by roll call*  
41 *vote.*

42 (i) *Upon the expiration of the term of office of any member of the*  
43 *medicaid drug utilization review board on or after the effective date of*

1 *this act and in any case of a vacancy existing in the membership position*  
2 *of any of member of the medicaid drug utilization review board on or*  
3 *after the effective date of this act, a successor shall be appointed by the*  
4 *secretary of social and rehabilitation services so that as the terms of mem-*  
5 *bers expire, or vacancies occur, members are appointed and the compo-*  
6 *sition of the board is changed in accordance with the following and such*  
7 *appointment shall be made by the secretary in the following order of*  
8 *priority:*

9 (1) *One member shall be a licensed pharmacist who is actively per-*  
10 *forming or who has experience performing medicaid pharmacy services*  
11 *for a hospital and who is nominated by the Kansas hospital association*  
12 *and appointed by the secretary from a list of two or more nominees;*

13 (2) *one member shall be a licensed pharmacist who is actively per-*  
14 *forming or who has experience performing medicaid pharmacy services*  
15 *for a licensed adult care home and who is nominated by the state board*  
16 *of pharmacy and appointed by the secretary from a list of two or more*  
17 *nominees;*

18 (3) *one member shall be a licensed physician who is actively engaged*  
19 *in the general practice of allopathic medicine and who has practice ex-*  
20 *perience with the state medicaid plan and who is nominated by the Kansas*  
21 *medical society and appointed by the secretary from a list of two or more*  
22 *nominees;*

23 (4) *one member shall be a licensed physician who is actively engaged*  
24 *in mental health practice providing care and treatment to persons with*  
25 *mental illness, who has practice experience with the state medicaid plan*  
26 *and who is nominated by the Kansas psychiatric society and appointed*  
27 *by the secretary from a list of two or more nominees;*

28 (5) *one member shall be a licensed physician who is the medical di-*  
29 *rector of a nursing facility, who has practice experience with the state*  
30 *medicaid plan and who is nominated by the Kansas medical society and*  
31 *appointed by the secretary from a list of two or more nominees;*

32 (6) *one member shall be a licensed physician who is actively engaged*  
33 *in the general practice of osteopathic medicine, who has practice experi-*  
34 *ence with the state medicaid plan and who is nominated by the Kansas*  
35 *association of osteopathic medicine and who is appointed by the secretary*  
36 *from a list of two or more nominees;*

37 (7) *one member shall be a licensed pharmacist who is actively engaged*  
38 *in retail pharmacy, who has practice experience with the state medicaid*  
39 *plan and who is nominated by the state board of pharmacy and appointed*  
40 *by the secretary from a list of two or more nominees;*

41 (8) *one member shall be a licensed pharmacist who is actively engaged*  
42 *in or who has experience in research pharmacy and who is nominated*  
43 *jointly by the Kansas task force for the pharmaceutical research and man-*

1 *ufacturers association and the university of Kansas and appointed by the*  
2 *secretary from a list of two or more jointly nominated persons; and*

3 (9) *one member shall be a licensed advanced registered nurse prac-*  
4 *titioner or physician assistant actively engaged in the practice of provid-*  
5 *ing the health care and treatment services such person is licensed to per-*  
6 *form, who has practice experience with the state medicaid plan and who*  
7 *is nominated jointly by the Kansas state nurses' association and the Kansas*  
8 *academy of physician assistants and appointed by the secretary from a*  
9 *list of two or more jointly nominated persons.*

10 Sec. 8. K.S.A. 39-7,120 is hereby amended to read as follows: 39-  
11 7,120. (a) ~~The department~~ *secretary of social and rehabilitation services*  
12 *shall not restrict patient access to prescription-only drugs pursuant to a*  
13 *program of prior authorization or a restrictive formulary except by rules*  
14 *and regulations adopted in accordance with K.S.A. 77-415 et seq., and*  
15 *amendments thereto. Prior to the promulgation of any such rules and*  
16 *regulations, the department secretary of social and rehabilitation services*  
17 *shall submit such proposed rules and regulations to the medicaid drug*  
18 *utilization review board for written comment. The secretary of social and*  
19 *rehabilitation services may not implement permanent prior authorization*  
20 *until 30 days after receipt of comments by the drug utilization review*  
21 *board.*

22 (b) *When considering recommendations from the medicaid drug util-*  
23 *ization review board regarding the prior authorization of a drug, the*  
24 *secretary of social and rehabilitation services shall consider the net eco-*  
25 *nomic impact of such prior authorization, including, but not limited to,*  
26 *the costs of specific drugs, rebates or discounts pursuant to 42 U.S.C.*  
27 *1396r-8, dispensing costs, dosing requirements and utilization of other*  
28 *drugs or other medicaid health care services which may be related to the*  
29 *prior authorization of such drug.*

30 Sec. 9. K.S.A. 2001 Supp. 77-421 is hereby amended to read as fol-  
31 lows: 77-421. (a) (1) Except as provided by subsection (a)(2) or subsection  
32 (a)(3), prior to the adoption of any permanent rule and regulation or any  
33 temporary rule and regulation which is required to be adopted as a tem-  
34 porary rule and regulation in order to comply with the requirements of  
35 the statute authorizing the same and after any such rule and regulation  
36 has been approved by the secretary of administration and the attorney  
37 general, the adopting state agency shall give at least 60 days' notice of its  
38 intended action in the Kansas register and to the secretary of state and  
39 to the joint committee on administrative rules and regulations established  
40 by K.S.A. 77-436, and amendments thereto. The notice shall be mailed  
41 to the secretary of state and to the chairperson of the joint committee  
42 and shall be published in the Kansas register. A complete copy of all  
43 proposed rules and regulations and the complete economic impact state-

1 ment required by K.S.A. 77-416, and amendments thereto, shall accom-  
2 pany the notice sent to the secretary of state. The notice shall contain:  
3 (A) A summary of the substance of the proposed rules and regulations;  
4 (B) a summary of the economic impact statement indicating the estimated  
5 economic impact on governmental agencies or units, persons subject to  
6 the proposed rules and regulations and the general public; (C) a summary  
7 of the environmental benefit statement, if applicable, indicating the need  
8 for the proposed rules and regulations; (D) the address where a complete  
9 copy of the proposed rules and regulations, the complete economic im-  
10 pact statement, the environmental benefit statement, if applicable, re-  
11 quired by K.S.A. 77-416, and amendments thereto, may be obtained; (E)  
12 the time and place of the public hearing to be held; the manner in which  
13 interested parties may present their views; and (F) a specific statement  
14 that the period of 60 days' notice constitutes a public comment period  
15 for the purpose of receiving written public comments on the proposed  
16 rules and regulations and the address where such comments may be sub-  
17 mitted to the state agency. Publication of such notice in the Kansas reg-  
18 ister shall constitute notice to all parties affected by the rules and  
19 regulations.

20 (2) Prior to adopting any rule and regulation which establishes sea-  
21 sons and fixes bag, creel, possession, size or length limits for the taking  
22 or possession of wildlife and after such rule and regulation has been ap-  
23 proved by the secretary of administration and the attorney general, the  
24 secretary of the department of wildlife and parks shall give at least 30  
25 days' notice of its intended action in the Kansas register and to the sec-  
26 retary of state and to the joint committee on administrative rules and  
27 regulations created pursuant to K.S.A. 77-436, and amendments thereto.  
28 All other provisions of subsection (a)(1) shall apply to such rules and  
29 regulations, except that the statement required by subsection (a)(1)(E)  
30 shall state that the period of 30 days' notice constitutes a public comment  
31 period on such rules and regulations.

32 (3) *Prior to adopting any rule and regulation which establishes any*  
33 *permanent prior authorization on a prescription-only drug pursuant to*  
34 *K.S.A. 39-7,120, and amendments thereto, or which concerns coverage or*  
35 *reimbursement for pharmaceuticals under the pharmacy program of the*  
36 *state medicaid plan, and after such rule and regulation has been approved*  
37 *by the secretary of administration and the attorney general, the secretary*  
38 *of social and rehabilitation services shall give at least 30 days' notice of*  
39 *such secretary's intended action in the Kansas register and to the secretary*  
40 *of state and to the joint committee on administrative rules and regulations*  
41 *created pursuant to K.S.A. 77-436, and amendments thereto. All other*  
42 *provisions of subsection (a)(1) shall apply to such rules and regulations,*  
43 *except that the statement required by subsection (a)(1)(E) shall state that*

1 *the period of 30 days' notice constitutes a public comment period on such*  
2 *rules and regulations.*

3 (b) On the date of the hearing, all interested parties shall be given  
4 reasonable opportunity to present their views or arguments on adoption  
5 of the rule and regulation, either orally or in writing. When requested to  
6 do so, the state agency shall prepare a concise statement of the principal  
7 reasons for adopting the rule and regulation or amendment thereto.  
8 Whenever a state agency is required by any other statute to give notice  
9 and hold a hearing before adopting, amending, reviving or revoking a rule  
10 and regulation, the state agency, in lieu of following the requirements or  
11 statutory procedure set out in such other law, may give notice and hold  
12 hearings on proposed rules and regulations in the manner prescribed by  
13 this section. Notwithstanding the other provisions of this section, the Kan-  
14 sas parole board and the secretary of corrections, may give notice or an  
15 opportunity to be heard to any inmate in the custody of the secretary of  
16 corrections with regard to the adoption of any rule and regulation, but  
17 the secretary shall not be required to give such notice or opportunity.

18 (c) When, pursuant to this or any other statute, a state agency holds  
19 a hearing on the adoption of a proposed rule and regulation, the agency  
20 shall cause written minutes or other records, including a record main-  
21 tained on sound recording tape or on any electronically accessed media  
22 or any combination of written or electronically accessed media records of  
23 the hearing to be made. If the proposed rule and regulation is adopted  
24 and becomes effective, the state agency shall maintain, for not less than  
25 three years after its effective date, such minutes or other records, together  
26 with a list of all persons who appeared at the hearing and who they rep-  
27 resented, any written testimony presented at the hearing and any written  
28 comments submitted during the public comment period.

29 (d) No rule and regulation shall be adopted by a board, commission,  
30 authority or other similar body except at a meeting which is open to the  
31 public and notwithstanding any other provision of law to the contrary, no  
32 rule and regulation shall be adopted by a board, commission, authority  
33 or other similar body unless it receives approval by roll call vote of a  
34 majority of the total membership thereof.

35 Sec. 10. K.S.A. 39-7,118, 39-7,119 and 39-7,120 and K.S.A. 2001  
36 Supp. 77-421 are hereby repealed.

37 Sec. 11. This act shall take effect and be in force from and after its  
38 publication in the Kansas register.

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