Session of 2002

SENATE BILL No. 422

By Committee on Ways and Means

1-23

AN ACT concerning reimbursement by the department of social and rehabilitation services for certain drugs; relating to the medicaid pharmacy programs; changing certain rules and regulations requirements; amending K.S.A. 39-7,120 and repealing the existing section.

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

New Section 1. (a) A practitioner may prescribe prescription-only drugs in accordance with this section that, in the professional judgment of the practitioner and within the lawful scope of the practitioner's practice, the practitioner considers appropriate for the diagnosis and treatment of a patient. The department of social and rehabilitation services may maintain a drug formulary under the medicaid program. However, such formulary shall not restrict a physician's ability to treat a patient with a drug that has been approved and designated as safe and effective by the federal food and drug administration act. The department may limit reimbursement for a prescription-only drug upon the recommendation of the drug utilization review committee and upon a finding that the drug is unsafe or is being prescribed contrary to the federally approved guidelines. Drugs used for cosmetic purposes, fertility drugs, anorexic drugs, nonlegend (over the counter) drugs, and drugs for which there is no federal financial participation shall be exempt from the provisions of this section, except that the department is authorized to include drugs from these categories for reimbursement based upon recommendations of the drug utilization review committee which may include prior authorization requirements to control use.

(b) Nothing in this section shall limit the authority of the department to reimburse for multisource prescription-only drugs in accordance with state and federal law, including state maximum allowable cost and federal upper limit requirements of the health care financing administration.

(c) The provisions in this section apply only to medicaid enrolled pharmacists engaged in dispensing prescriptions, drugs and medicines to medicaid patients. Except as provided in this section, it shall be unlawful for any pharmacist, assistant pharmacist or pharmacist intern who dispenses prescriptions, drugs and medicines to substitute an article different from the one ordered, or deviate in any manner from the require-

ments of an order or prescription without the approval of the prescriber.

(1) When a pharmacist receives a written prescription on which the prescriber has personally written in handwriting "dispense as written" or "D.A.W.", or an oral prescription in which the prescriber has expressly indicated that the prescription is to be dispensed as communicated, the pharmacist shall dispense the brand name legend drug as prescribed.

(2) When a pharmacist receives a written prescription on which the prescriber has not personally written in handwriting "dispense as written" or "D.A.W.", or an oral prescription in which the prescriber has not expressly indicated that the prescription is to be dispensed as communicated, and there is available in the pharmacist's stock a less expensive generically equivalent drug that is rated equivalent (AB-rated) by the food and drug administration and in the pharmacist's professional judgment, is safely interchangeable with the prescribed drug, then the pharmacist, after disclosing the substitution to the purchaser, shall dispense the generic drug, unless the purchaser objects. A pharmacist may also substitute pursuant to the oral instructions of the prescriber. A pharmacist shall notify the purchaser if the pharmacist is dispensing a drug other than the brand name drug prescribed.

(3) A pharmacist dispensing a drug under the provisions of (c)(2) shall not dispense a drug of a higher retail price than that of the brand name drug prescribed. If more than one safely interchangeable generic drug is available in a pharmacist's stock, then the pharmacist shall dispense the least expensive alternative.

(4) Nothing in this section requires a pharmacist to substitute a generic drug if the substitution will make the transaction ineligible for medicaid reimbursement.

(5) When a pharmacist dispenses a brand name legend drug and, at that time, a less expensive generically equivalent drug is also available in the pharmacist's stock, the pharmacist shall disclose to the purchaser that a generic drug is available.

(6) This section does not apply when a pharmacist is dispensing a prescribed drug to persons covered under a managed health care plan that maintains a mandatory or closed drug formulary.

Sec. 2. K.S.A. 39-7,120 is hereby amended to read as follows: 39-7,120. *(a) Except as provided in subparagraph (b),* the department of social and rehabilitation services shall not restrict patient access to prescription-only drugs pursuant to a program of prior authorization or a restrictive formulary except by rules and regulations adopted in accordance with K.S.A. 77-415 *et seq*. Prior to the promulgation of any such rules and regulations, the department shall submit such proposed rules and regulations to the medicaid drug utilization review board *during an open meeting* for written comment. *The department may implement per-*

manent prior authorization 30 days after receipt of comments by the drug utilization review board.

(b) The department may impose temporary prior authorization on any prescription only drug for a period of no more than 120 days without the adoption of rules and regulations as required in subparagraph (a) of this section. Such prior authorization shall first be presented to the drug utilization review board and placed on the agenda of the board for public oral and written comment at the next regularly scheduled meeting. Notice of such prior authorization and any approval criteria shall be provided in writing to those persons who have requested notice of drug utilization review board meetings, drug manufacturers of the products affected by the prior authorization and recognized physician and pharmacist associations in Kansas. Following the public comment, the board shall make a recommendation whether to temporarily place prior authorization on a prescription only drug which may include suggested approval criteria. The department may impose the prior authorization on such drug, including approval criteria, 30 days after receipt of comments by the drug utilization review board. Written notice of the temporary prior authorization shall be provided by the department to the joint committee on rules and regulations.

Sec. 3. K.S.A. 39-7,120 is hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the Kansas register.