

## HOUSE BILL No. 2357

By Representative Swenson

2-12

---

AN ACT concerning health care; relating to the cost of prescription drugs; enacting the Kansas prescription drug card program act; amending K.S.A. 2002 Supp. 39-7,121a and 39-7,121e and repealing the existing sections.

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

New Section 1. As used in this act unless context shows otherwise:

(a) "Department" means the state department of social and rehabilitation services.

(b) "Labeler" means an entity or person that receives prescription drugs from a manufacturer and repackages those drugs for later retail sale, and that has a labeler code from the federal food and drug administration under 21 CFR 207.20 as in effect on the effective date of this act.

(c) "Manufacturer" means a manufacturer of prescription drugs as defined in 42 U.S.C. section 1396r-8(k)(5) as in effect on the effective date of this act. The term manufacturer shall also include any subsidiary or affiliate of a manufacturer.

(d) "Participating retail pharmacy" means a retail pharmacy or other business licensed under the pharmacy act of the state of Kansas to dispense prescription drugs in this state that:

(1) Participates in the state medicaid program; or

(2) voluntarily agrees to participate in the prescription drug card program established by this act.

(e) "Secretary" means the secretary of the department of social and rehabilitation services.

New Sec. 2. (a) The secretary shall negotiate discount prices or rebates for prescription drugs from drug manufacturers and labelers. A drug manufacturer or labeler that sells prescription drugs in this state may voluntarily elect to negotiate with the secretary:

(1) Supplemental rebates for the medicaid program over and above those required under 42 U.S.C. section 1396r-8;

(2) discount prices or rebates for the prescription drug card program established by this act; and

(3) discount prices or rebates for any other state programs that pay

1 for or acquire prescription drugs.

2 (b) In negotiating rebate terms, the secretary shall take into consid-  
3 eration: The rebate calculated under the medicaid rebate program pur-  
4 suant to 42 U.S.C. section 1396r-8, the price provided to eligible entities  
5 under 42 U.S.C. section 256b, and any other available information on  
6 prescription drug prices, discounts and rebates.

7 (c) (1) The secretary shall review whether to place a manufacturer's  
8 or labeler's products on the prior authorization list for the state medicaid  
9 program and take similar actions involving prior authorization or formu-  
10 laries for any other state-funded or operated prescription drug program,  
11 if:

12 (A) The secretary and a drug manufacturer or labeler fail to reach  
13 agreement on the terms of a supplemental medicaid rebate or a discount  
14 or rebate for the prescription drug card program established by this act;  
15 and

16 (B) the discounts or rebates offered by the manufacturer or labeler  
17 are not as favorable to the state as the prices provided to eligible entities  
18 under 42 U.S.C. section 256b.

19 (2) Any prior authorization must meet the requirements of 42 U.S.C.  
20 section 1396r-8(d)(5).

21 (3) The names of manufacturers and labelers that enter into rebate  
22 agreements are public information and the department shall release this  
23 information to the public and actively distribute such information to doc-  
24 tors, pharmacists and other health professionals.

25 New Sec. 3. (a) The department shall establish the Kansas prescrip-  
26 tion drug card program as a state pharmaceutical assistance program un-  
27 der 42 U.S.C. section 1396r-8(c)(1)(C)(i)(III), to provide discounts to  
28 participants for drugs covered by a rebate agreement. Using sums from  
29 negotiated rebates, the department shall contract with participating retail  
30 pharmacies to deliver discounted prices to participants in the Kansas pre-  
31 scription drug card program.

32 (b) The drug discounts received by Kansas prescription drug card  
33 participants shall be calculated by the secretary on a quarterly basis. That  
34 calculation shall provide discounts approximately equal to the amount of  
35 the negotiated drug rebate minus an amount necessary, as determined  
36 by the secretary, to cover the reasonable administrative costs of the Kan-  
37 sas prescription drug card program.

38 (c) (1) An individual is eligible to participate in the Kansas prescrip-  
39 tion drug card program if the individual is a resident of this state and is  
40 eligible for participation in the medicare program or has a net family  
41 income below 300% of the federal poverty level.

42 (2) An individual is ineligible to participate in the Kansas prescription  
43 drug card program if such individual is eligible for assistance under the

1 state's medicaid program or is covered by an insurance policy that pro-  
2 vides benefits for prescription drugs equal to or greater than the benefits  
3 provided under the Kansas prescription drug card program, as delineated  
4 by rules and regulations promulgated by the secretary.

5 (3) The department shall establish, by rule and regulation, simple  
6 procedures for enrolling Kansas prescription drug card program partici-  
7 pants and shall undertake outreach efforts to build public awareness of  
8 the program and maximize enrollment by eligible residents.

9 (d) (1) The secretary shall adopt rules and regulations requiring dis-  
10 closure by participating retail pharmacies to the Kansas prescription drug  
11 card program participants of the amount of savings provided as a result  
12 of such program. The rules and regulations must protect information that  
13 is proprietary in nature.

14 (2) A participating retail pharmacy shall verify to the department the  
15 amounts charged to Kansas prescription drug card program participants  
16 and nonparticipants, and shall provide the department with utilization  
17 data necessary to calculate rebates from manufacturers and labelers. The  
18 department shall protect the confidentiality of all information subject to  
19 confidentiality protection under state or federal law, rule or regulation.  
20 The department may not impose transaction charges on any participating  
21 retail pharmacy that submit claims or receive payments under the Kansas  
22 prescription drug card program.

23 (3) Subject to the appropriations available therefor, each participating  
24 retail pharmacy shall be paid in advance for Kansas prescription drug card  
25 program discounts or shall be reimbursed by the department on a weekly  
26 basis.

27 New Sec. 4. (a) Any disputes or discrepancies in rebate amounts  
28 must be resolved using the process established in this section.

29 (1) If there is a discrepancy in the manufacturer's or labeler's favor  
30 between the amount claimed by a pharmacy and the amount rebated by  
31 the manufacturer or labeler, the department, at the department's ex-  
32 pense, may hire a mutually agreed-upon independent auditor. If a dis-  
33 crepancy still exists following the audit, the manufacturer or labeler shall  
34 justify the reason for the discrepancy or make payment to the department  
35 for any additional amount due.

36 (2) If there is a discrepancy against the interest of the manufacturer  
37 or labeler in the information provided by the department to the manu-  
38 facturer or labeler regarding the manufacturer's or labeler's rebate, the  
39 manufacturer or labeler, at the manufacturer's or labeler's expense, may  
40 hire a mutually agreed-upon independent auditor to verify the accuracy  
41 of the data supplied to the department. If a discrepancy still exists follow-  
42 ing the audit, the department shall justify the reason for the discrepancy  
43 or refund to the manufacturer any excess payment made by the manu-

1 manufacturer or labeler.

2 (3) Following the procedures established in paragraph (1) or (2), ei-  
3 ther the department or the manufacturer or labeler may request a hear-  
4 ing. Supporting documentation must accompany the request for a hear-  
5 ing. Any hearing shall be conducted in accordance with the Kansas  
6 administrative procedure act.

7 (b) The department shall report the enrollment and financial status  
8 of the Kansas prescription drug card program and report savings from  
9 supplemental medicaid rebates to the speaker of the house of represen-  
10 tatives and the president of the senate on or before February 1 each year.

11 (c) Where the secretary finds that it is beneficial to both the Kansas  
12 prescription drug card program and any other state program, including  
13 the state medicaid program, to combine drug pricing negotiations to max-  
14 imize drug rebates, the secretary shall do so.

15 (d) The department may seek any waivers of federal law, rule or reg-  
16 ulation necessary to implement the provisions of this section.

17 New Sec. 5. (a) In the performance of duties under this act, the  
18 secretary may enter into any contracts or purchase any goods or services  
19 deemed necessary to implement this act.

20 (b) On or before July 1, 2004, the secretary shall adopt rules and  
21 regulations necessary to implement the provisions of this act.

22 New Sec. 6. (a) There is hereby established in the state treasury the  
23 Kansas prescription drug card program fund. All moneys received from  
24 participating manufacturers and labelers paying rebates and any appro-  
25 priations or allocations designated to the fund shall be remitted in ac-  
26 cordance with the provisions of K.S.A. 75-4215, and amendments thereto,  
27 to the state treasurer. The state treasurer shall deposit the entire amount  
28 in the state treasury and credit it to the state prescription rebate fund.

29 (b) The secretary of social and rehabilitation services shall administer  
30 this fund.

31 (c) On or before the 10th day of each month the director of accounts  
32 and reports shall transfer from the state general fund to the state pre-  
33 scription rebate fund interest earnings based on:

34 (1) The average daily balance of moneys in the state prescription re-  
35 bate fund for the preceding month; and

36 (2) the net earnings rate of the pooled money investment portfolio  
37 for the preceding month.

38 (d) All expenditures from the state prescription rebate fund shall be  
39 made in accordance with appropriation acts upon warrants of the director  
40 of accounts and reports issued pursuant to vouchers approved by the  
41 secretary.

42 New Sec. 7. If any provision of this act or the application thereof to  
43 any person or circumstance is held invalid, the validity of the remainder

1 of the act and of the application of such provision to other persons and  
2 circumstances shall not be affected thereby.

3 New Sec. 8. No requirements for prior authorization or other re-  
4 strictions on medications used to treat mental illnesses such as schizo-  
5 phrenia, severe depression or bipolar disorder may be imposed on medi-  
6 caid recipients. Medications that will be available without restriction for  
7 persons with mental illnesses include atypical antipsychotic medications,  
8 conventional antipsychotic medications and other medications used for  
9 the treatment of serious mental illnesses. A prescription medication pre-  
10 scribed for a medicaid recipient with mental illness pursuant to a pre-  
11 scription which is valid on the effective date of this act shall not be subject  
12 to any requirement for prior authorization unless the practitioner who  
13 prescribed the medication for such recipient prescribes a different  
14 medication.

15 New Sec. 9. Sections 1 through 9, inclusive, and amendments  
16 thereto, shall be known and may be cited as the Kansas prescription drug  
17 card program act.

18 Sec. 10. K.S.A. 2002 Supp. 39-7,121a is hereby amended to read as  
19 follows: 39-7,121a. (a) The secretary of social and rehabilitation services  
20 may establish an advisory committee pursuant to K.S.A. 75-5313, and  
21 amendments thereto, to advise the secretary in the development of a  
22 preferred formulary listing of covered drugs by the state medicaid  
23 program.

24 (b) The secretary of social and rehabilitation services shall evaluate  
25 drugs and drug classes for inclusion in the state medicaid preferred drug  
26 formulary based on safety, effectiveness and clinical outcomes of such  
27 treatments. In addition, the secretary shall evaluate drugs and drug classes  
28 to determine whether inclusion of such drugs or drug classes in a starter  
29 dose program would be clinically efficacious and cost effective. If the  
30 factors of safety, effectiveness and clinical outcomes among drugs being  
31 considered in the same class indicate no therapeutic advantage, then the  
32 secretary shall consider the cost effectiveness and the net economic im-  
33 pact of such drugs in making recommendations for inclusion in the state  
34 medicaid preferred drug formulary. Drugs which do not have a signifi-  
35 cant, clinically meaningful therapeutic advantage in terms of safety, ef-  
36 fectiveness or clinical outcomes over other drugs in the same class which  
37 have been selected for the preferred drug formulary may be excluded  
38 from the preferred drug formulary and may be subject to prior authori-  
39 zation in accordance with state and federal law, ~~except, prior to July 1,~~  
40 ~~2003, where a prescriber has personally written "dispense as written" or~~  
41 ~~"D.A.W.," or has signed the prescriber's name on the "dispense as writ-~~  
42 ~~ten" signature line in accordance with K.S.A. 65-1637, and amendments~~  
43 ~~thereto.~~

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

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

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

16 Sec. 11. K.S.A. 2002 Supp. 39-7,121e is hereby amended to read as  
17 follows: 39-7,121e. ~~(a) Except where a prescriber has personally written~~  
18 ~~“dispense as written” or “D.A.W.,” or has signed the prescriber’s name~~  
19 ~~on the “dispense as written” signature line in accordance with K.S.A. 65-~~  
20 ~~1637 and amendments thereto, the secretary of social and rehabilitation~~  
21 ~~services may limit reimbursement for a prescription under the medicaid~~  
22 ~~program to the multisource generic equivalent drug.~~

23 ~~—(b) No pharmacist participating in the medical assistance program~~  
24 ~~shall be required to dispense a prescription-only drug that will not be~~  
25 ~~reimbursed by the medical assistance program.~~

26 Sec. 12. K.S.A. 2002 Supp. 39-7,121a and 39-7,121e are hereby  
27 repealed.

28 Sec. 13. This act shall take effect and be in force from and after its  
29 publication in the statute book.

30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43