

## CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 20** submits the following report:

The Senate accedes to all House amendments to the bill, and your committee on conference further agrees to amend the bill as printed with House Committee amendments, as follows:

On page 1, by striking all in lines 8 through 36;

By striking all on pages 2 through 11;

On page 12, by striking all in lines 1 through 4; following line 4, by inserting

"New Section 1. (a) An auditing entity conducting a pharmacy audit under this act shall:

(1) Keep information collected during a pharmacy audit confidential, except that such auditing entity may share the information with the pharmacy benefits manager, the covered entity for which the audit is being conducted and any regulatory agency and law enforcement agency as required by law;

(2) provide the pharmacy being audited with at least 14 calendar days' prior written notice before conducting such audit unless both parties agree otherwise. If the pharmacy requests a delay of the audit, such pharmacy shall provide notice to the pharmacy benefits manager within 72 hours of receiving notice of the audit;

(3) accept paper or electronic signature logs documenting the delivery of prescription or nonproprietary drugs and pharmacist services to a health plan beneficiary or such beneficiary's caregiver or guardian;

(4) provide a complete list of reviewed pharmacy records to an authorized representative of the pharmacy prior to leaving the pharmacy after the on-site portion of the audit has been completed;

(5) (A) provide the pharmacy with a written preliminary report of the pharmacy audit.

Such report shall:

(i) Be delivered to the pharmacy or the pharmacy's corporate parent within 60 calendar days after completion of the on-site portion of the pharmacy audit;

(ii) include contact information for the auditing entity that conducted the pharmacy audit and an appropriate and accessible contact person, including such person's telephone number, facsimile number, email address and the auditing entity name and address so that audit results, procedures and any discrepancies can be reviewed; and

(iii) include, but not be limited to, claim level information for any discrepancy found and total dollar amounts of claims subject to recovery; and

(B) a pharmacy shall have at least 30 calendar days following receipt of the preliminary audit report to respond to the findings of the preliminary report;

(6) deliver the final written report to the pharmacy or the pharmacy's corporate parent within 90 calendar days after completion of the pharmacy audit. Such report shall include any response provided to the auditing entity by the pharmacy or corporate parent and consider and address all such responses. The final audit report may be delivered electronically; and

(7) upon request of the plan sponsor, provide a copy of the final report to the plan sponsor, including the disclosure of any money recouped in the audit. The auditing entity shall provide a copy of the report to the commissioner upon request. No report provided to the commissioner shall contain the protected health information of any individual. Reports provided to the commissioner shall be confidential by law, shall not be subject to subpoena and may not be made public by the commissioner or any other person, except to the extent otherwise specifically provided in the Kansas open records act, K.S.A. 45-215 et seq., and amendments thereto.

(b) An auditing entity conducting a pharmacy audit as provided in this act may:

(1) Have access to a pharmacy's previous audit report only if the report was prepared by that auditing entity, except as otherwise provided by federal or state law; and

(2) not charge back, recoup or collect penalties from a pharmacy until the time to file an appeal of a final pharmacy audit has passed or the appeals process has been exhausted, whichever is later.

(c) An auditing entity conducting a pharmacy audit as provided in this act shall not:

(1) Compensate such entity's employees or contractors contracted to conduct a pharmacy audit based solely on the amount claimed or the actual amount recouped during such audit;

(2) during the first five days of any month, initiate or schedule a pharmacy audit for any pharmacy averaging more than 600 prescriptions filled per week without the express consent of the pharmacy;

(3) use extrapolation to calculate penalties or amounts to be charged back or recouped unless otherwise required by federal law;

(4) include dispensing fees in the calculation of overpayments unless a prescription is considered a misfill; and

(5) (A) seek any fine, charge back, recoupment or other adjustment for a dispensed product or any portion of a dispensed product unless one or more of the following has occurred:

(i) Fraud or other intentional and willful misrepresentation has been committed by the pharmacy, as evidenced by a review of the claims data, statements, physical review or other investigative method;

(ii) the pharmacy has dispensed a product in excess of the benefit design as established by the plan sponsor;

(iii) the pharmacy has not filled prescriptions in accordance with the prescriber's order;

or

(iv) an actual underpayment or overpayment has been made to the pharmacy; and

(B) any fee, charge back, recoupment or other adjustment shall be limited to the actual financial harm associated with the dispensed product or portion of the dispensed product or the actual underpayment or overpayment, pursuant to subparagraph (A).

(d) A pharmacy audit that involves clinical judgment shall be conducted by or in consultation with a pharmacist. Such pharmacy audit shall not cover:

(1) A period of more than 24 months after the date that a claim was submitted by the pharmacy to the pharmacy benefits manager or covered entity unless a longer period is required by law; or

(2) more than 250 prescriptions. A refill does not constitute a separate prescription for the purposes of this paragraph.

(e) When a pharmacy audit is performed, a pharmacy may use:

(1) Authentic and verifiable statements or records, including, but not limited to, medication administration records of a nursing home, assisted living facility, hospital or healthcare provider with prescriptive authority to validate the pharmacy record and delivery; or

(2) any valid prescription, including, but not limited to, medication administration records, facsimiles, electronic prescriptions, electronically stored images of prescriptions, electronically created annotations or documentation of telephone calls from the prescribing healthcare provider or practitioner's agent to validate claims in connection with prescriptions or changes in prescriptions or refills of prescription or nonproprietary drugs. Documentation of an oral prescription order that has been verified by the prescribing healthcare provider shall be deemed to meet the provisions of this subsection for the initial audit review.

(f) A pharmacy that is the subject of a pharmacy audit may not be subject to a charge

back or recoupment for a clerical or recordkeeping error in a required document or record, including a typographical or computer error, unless the error resulted in overpayment to the pharmacy. Such pharmacy may appeal a final audit report in accordance with procedures established by the entity conducting the pharmacy audit.

(g) If an identified discrepancy in a pharmacy audit exceeds \$25,000, future payments made by the pharmacy benefits manager to the pharmacy in excess of such amount may be withheld pending adjudication of an appeal.

(h) No interest may accrue for any party during an audit period, beginning with the notice of the pharmacy audit and ending with the conclusion of the appeals process.

(i) Except for medicare claims, approval of drug, prescriber or patient eligibility upon adjudication of a claim may not be reversed unless the pharmacy or pharmacist obtained adjudication by fraud or misrepresentation of claims elements.

(j) The provisions of this section shall not apply to a pharmacy audit if:

(1) Fraud, waste, abuse or other intentional misconduct is indicated by physical review or review of claims data or statements; or

(2) other investigative methods indicate that the pharmacy is or has been engaged in criminal wrongdoing, fraud or other intentional or willful misrepresentation.

(k) This section shall be a part of and supplemental to the Kansas consumer prescription protection and accountability act.

New Sec. 2. (a) No person shall act or operate as an auditing entity without first registering with the commissioner.

(b) Each person seeking to register as an auditing entity shall file with the commissioner an application upon a form prescribed by the commissioner accompanied by a nonrefundable registration fee in an amount of not to exceed \$500. At a minimum, the

application form shall include the following:

- (1) Identity, address and telephone number of the applicant;
  - (2) name, business address and telephone number of the contact person for the applicant; and
  - (3) federal employer identification number for the applicant, if applicable.
- (c) The commissioner shall issue a certificate of registration to an applicant if the commissioner determines that the applicant has submitted a completed application and paid the required registration fee.
- (d) The certificate of registration is nontransferable and shall prominently list the expiration date of the registration.
- (e) Each auditing entity registration shall expire on March 31 of each year and may be renewed annually at the request of the pharmacy auditing entity on or before March 31 of each year. The application for renewal shall be submitted by the auditing entity on a form prescribed by the commissioner and accompanied by a renewal fee in an amount of not to exceed \$250.
- (f) If a registered auditing entity fails to provide a completed application for renewal by March 31 or if the renewal fee is not paid by March 31, then a penalty fee shall be assessed in an amount of not to exceed \$250. The auditing entity shall remit the renewal fee plus penalty fee before the commissioner shall issue such auditing entity's registration renewal.
- (g) An auditing entity's registration may be suspended by the commissioner until the renewal application has been received and the renewal fee and any penalty assessed has been paid.
- (h) Not later than December 1 of each year, the commissioner shall set and cause to be published in the Kansas register the fees required pursuant to this section for the next calendar year.

(i) This section shall be a part of and supplemental to the Kansas consumer prescription protection and accountability act.

New Sec. 3. (a) Each pharmacy benefits manager shall:

(1) For each health plan or covered entity for which such pharmacy benefits manager provides pharmacy benefits management services, annually or more frequently upon the commissioner's request, report to the commissioner the aggregate:

(A) Amount of rebates received by the pharmacy benefits manager;

(B) amount of rebates distributed to each health plan or covered entity contracted with the pharmacy benefits manager;

(C) and individual amount paid by the health plan or covered entity to the pharmacy benefits manager for pharmacist services itemized by pharmacy, product and goods and services; and

(D) and individual amount that a pharmacy benefits manager paid for pharmacist services itemized by pharmacy, product and goods and services;

(2) annually, report to the commissioner and each contracted health plan or covered entity the aggregate difference between the amount that the pharmacy benefits manager reimbursed pharmacies and the amount that the pharmacy benefits manager charged such health plan; and

(3) (A) quarterly, report to the commissioner on all drugs appearing on the national average drug acquisition cost list that are reimbursed at 10% and below the national average drug acquisition cost and all drugs that are reimbursed at 10% and above the national average drug acquisition cost and the net acquisition cost for each class of drug appearing on the national average acquisition cost list that the pharmacy benefits manager charged each health benefit plan.

(B) For each drug in the report, the pharmacy benefits manager shall include:

- (i) The month that the drug was dispensed;
- (ii) the quantity of the drug dispensed;
- (iii) the amount that the pharmacy was reimbursed;
- (iv) whether the dispensing pharmacy was an affiliate of the pharmacy benefits manager;
- (v) whether the drug was dispensed pursuant to a government health plan; and
- (vi) the average national drug acquisition cost for the month that the drug was dispensed.

(C) The pharmacy benefits manager shall publish a copy of this report on the pharmacy benefits manager's publicly available website for at least 24 months.

(D) This report shall be exempt from the confidentiality provisions of subsection (d).

(b) (1) Annually, each health benefit plan or covered entity shall report to the commissioner the aggregate amount of credits, rebates, discounts or other such payments received by the health benefit plan or covered entity from a pharmacy benefits manager or drug manufacturer.

(2) Use of annual reporting provided pursuant to this subsection by health benefit plans and covered entities shall be limited to verification of data pursuant to this subsection for compliance purposes.

(c) No report provided to the commissioner shall include the protected health information of any individual.

(d) The reports required by this section shall be filed electronically on a form and in a manner prescribed by the commissioner.

(e) With the exception of the report described in subsection (a)(3), all data and



information provided by the pharmacy benefits manager, health plan or covered entity, pursuant to the reporting requirements established by this section, shall:

- (1) Be considered proprietary and confidential; and
- (2) not be subject to disclosure under the Kansas open records act, K.S.A. 45-215 et seq., and amendments thereto.

(f) This section shall be a part of and supplemental to the Kansas consumer prescription protection and accountability act.

New Sec. 4. (a) The commissioner may examine the affairs of a pharmacy benefits manager for compliance with the requirements of this act.

(b) Every examination conducted under this section shall follow the examination procedures and requirements provided in K.S.A. 40-222, and amendments thereto. The commissioner may assess the costs of the examination to the pharmacy benefits manager.

(c) (1) A pharmacy benefits manager shall not be subject to the provisions of K.S.A. 40-222(a), and amendments thereto, pertaining to the frequency of financial examinations of insurers.

(2) The commissioner may examine a pharmacy benefits manager, pursuant to this section, whenever the commissioner believes it is reasonably necessary to ensure compliance with this act.

(d) (1) No protected health information shall be provided to the commissioner pursuant to this section.

(2) The information and data obtained by the commissioner from a pharmacy benefits manager under this section shall be considered confidential by law and exempt from disclosure in accordance with K.S.A. 40-222, and amendments thereto, and shall not be subject to disclosure under the Kansas open records act, K.S.A. 45-215 et seq., and amendments thereto.

(e) This section shall be a part of and supplemental to the Kansas consumer prescription protection and accountability act.

New Sec. 5. (a) A pharmacy benefits manager shall not:

(1) Collect from a pharmacy, pharmacist or pharmacy technician any cost share charged to a covered person that exceeds the total submitted charges by the pharmacy or pharmacist to the pharmacy benefits manager;

(2) (A) reimburse a pharmacy, pharmacist or pharmacy technician for a prescription drug or pharmacy service any amount that is less than the national average drug acquisition cost for the prescription drug or pharmacy service at the time that the drug is administered or dispensed, plus a professional dispensing fee that is the greater of \$10.50 or the dispensing fee calculated pursuant to K.A.R. 30-5-94; or

(B) if the national average drug acquisition cost is not available at the time that a drug is administered or dispensed, a pharmacy benefits manager shall not reimburse a pharmacy, pharmacist or pharmacy technician an amount that is less than the wholesale acquisition cost of the drug as defined in 42 U.S.C. § 1395w-3a(c)(6)(B) plus a professional dispensing that is the greater of \$10.50 or the dispensing fee calculated pursuant to K.A.R. 30-5-94;

(3) reimburse a pharmacy or pharmacist for a prescription drug or pharmacy service any amount less than the amount that the pharmacy benefits manager would reimburse itself or an affiliate for the same prescription drug or pharmacy service; and

(4) engage in any practice that:

(A) Includes imposing a point-of-sale fee or retroactive fee; or

(B) derives any revenue from a pharmacy or covered person in connection with performing pharmacy benefits management services. The provisions of this section shall not be construed to prohibit pharmacy benefits managers from processing deductibles or copayments

approved by a covered person's health benefit plan.

(b) A pharmacy benefits manager shall:

(1) Charge a health benefit plan the same price for a prescription drug as such pharmacy benefits manager pays a pharmacy for the prescription drug; and

(2) for purposes of complying with the provisions of subsection (a)(2), utilize the most recently published monthly national average drug acquisition cost as a point of reference for the ingredient drug product component of a pharmacy's reimbursement for drugs appearing on the national average drug acquisition cost list.

(c) (1) Any methodology utilized by a pharmacy benefits manager in connection with reimbursement shall be filed with the commissioner at the time of initial licensure and at any time thereafter that any methodology is changed by the pharmacy benefits manager.

(2) A methodology shall not be subject to disclosure and shall be treated as confidential and exempt from disclosure under the Kansas open records act, K.S.A. 45-215 et seq., and amendments thereto.

(3) Every filed methodology shall comply with the provisions of subsection (a)(2), and no pharmacy benefits manager shall enter into a contract with a pharmacy that provides for reimbursement methodology that is impermissible under the provisions of subsection (a)(2).

(d) Any rebate not applied to reduce a covered individual's defined cost sharing by the insurer shall be passed on to the health plan. Nothing in this act shall be deemed to require or preclude an insurer from decreasing a covered individual's defined cost sharing by the application of rebates.

(e) The provisions of this section shall not apply to self-funded health plans subject to the provisions of ERISA, the federal employee retirement income security act of 1974.

(f) The commissioner may order reimbursement to a covered person, pharmacy or

dispenser who has incurred a monetary loss as a result of a violation of this act.

(g) This section shall be a part of and supplemental to the Kansas consumer prescription protection and accountability act.

New Sec. 6. (a) Every pharmacy benefits manager contract between a pharmacy benefits manager and a pharmacy shall include a requirement that the pharmacy benefits manager provide to the pharmacy a copy of any contract, amendment, payment schedule or reimbursement rate within 10 calendar days after the execution or amendment to such contract.

(b) This section shall be a part of and supplemental to the Kansas consumer prescription protection and accountability act.

New Sec. 7. (a) If any provision of this act or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this act that can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

(b) This section shall be a part of and supplemental to the Kansas consumer prescription protection and accountability act.

Sec. 8. K.S.A. 2025 Supp. 40-202 is hereby amended to read as follows: 40-202. Except as provided in the Kansas consumer prescription protection and accountability act, nothing contained in this code shall apply to:

(a) Grand or subordinate lodges of any fraternal benefit society that admits to membership only persons engaged in one or more hazardous occupations in the same or similar line of business or to fraternal benefit societies as defined in and organized under article 7 of chapter 40 of the Kansas Statutes Annotated, and amendments thereto, unless they be expressly designated;

(b) the employees of a particular person, firm, or corporation;

(c) mercantile associations that simply guarantee insurance to each other in the same lines of trade and do not solicit insurance from the general public;

(d) the Swedish mutual aid association of Rapp, Osage county, Kansas;

(e) the Scandia mutual protective insurance company of Chanute, Kansas;

(f) the Seneca and St. Benedict mutual fire insurance company of Nemaha county, Kansas;

(g) the mutual insurance system practiced in the Mennonite church, in accordance with an old custom, either by the congregation themselves or by special associations, of its members in Kansas;

(h) the Kansas state high-school activities association;

(i) the mutual aid association of the church of the brethren;

(j) a voluntary noncontractual mutual aid arrangement whereby the needs of participants are announced and accommodated through subscriptions to a monthly publication;

(k) a self-funded health plan established or maintained for its employees by the state or a subdivision of the state, a school district, any public authority or by a county or city government or any political subdivision, agency or instrumentality thereof; or

(l) a self-funded health plan established or maintained for its employees by a church or by a convention or association of churches that is exempt from tax under section 501 of the internal revenue code.

Sec. 9. K.S.A. 40-222 is hereby amended to read as follows: 40-222. (a) Whenever the commissioner of insurance deems it necessary but at least once every five years, the commissioner may make, or direct to be made, a financial examination of any insurance company in the process of organization, or applying for admission or doing business in this state. In addition, at the commissioner's discretion the commissioner may make, or direct to be made, a

market regulation examination of any insurance company doing business in this state.

(b) Whenever the commissioner deems it necessary, the commissioner may make or direct to be made a financial examination or market regulation examination of any pharmacy benefits manager that conducts business in Kansas.

(c) In scheduling and determining the nature, scope and frequency of examinations of financial condition, the commissioner shall consider such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants and other criteria as set forth in the examiner's handbook adopted by the national association of insurance commissioners and in effect at the time of such examination as announced by the commissioner pursuant to K.S.A. 40-2,256, and amendments thereto, when the commissioner exercises discretion under this subsection.

~~(e)(d)~~ For the purpose of such ~~examination~~ examinations, the commissioner of insurance or the persons appointed by the commissioner, ~~for the purpose of making such examination~~ shall have ~~free~~ access at no cost to the books and papers of any such insurance company or pharmacy benefits manager that ~~relate~~ relates to ~~its~~ such insurance company's or pharmacy benefits manager's business and to the books and papers kept by any of its agents and may examine under oath, which the commissioner or the persons appointed by the commissioner are empowered to administer, the directors, officers, agents or employees of any such insurance company or pharmacy benefits manager in relation to ~~its~~ such insurance company's or pharmacy benefits manager's affairs, transactions and condition.

~~(d)(e)~~ The commissioner may also examine or investigate any person, or the business of any person, in so far as such examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the insurance company or pharmacy benefits manager, but such examination or investigation shall not infringe upon or extend to any

communications or information accorded privileged or confidential status under any other laws of this state.

~~(e)(f)~~ In lieu of examining the financial condition of a foreign or alien insurance company or pharmacy benefits manager, the commissioner of insurance may accept the report of ~~the an~~ examination made by or upon the authority of the company's state of domicile or port-of-entry state ~~until January 1, 1994. Thereafter, such reports as they relate to financial condition may only be accepted~~ if:

(1) At the time of the examination, the insurance department conducting the examination was ~~at the time of the examination~~ accredited under the national association of insurance commissioners' financial regulation standards and accreditation program; or

(2) the examination ~~is~~ was performed under the supervision of an accredited insurance department, or with the participation of one or more examiners who are employed by such an accredited insurance department and who, after a review of the examination work papers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by ~~their~~ such insurance company's insurance department.

~~(f)(g)~~ Upon determining that an examination should be conducted, the commissioner or the commissioner's designee shall appoint one or more examiners to perform the examination and instruct ~~them~~ such examiner as to the scope of the examination. In conducting an examination of financial condition, the examiner shall observe those guidelines and procedures set forth in the version of the examiners' handbook adopted promulgated by the national association of insurance commissioners in effect at the time of such examination as announced by the commissioner pursuant to K.S.A. 40-2,256, and amendments thereto. The commissioner may also employ such other guidelines or procedures as the commissioner may deem appropriate.

~~(g)~~(h) The refusal of any insurance company or pharmacy benefits manager, by its officers, directors, employees or agents, to submit to examination or to comply with any reasonable written request of the examiners shall be grounds for suspension or refusal of, or nonrenewal of any license or authority held by the company to engage in an insurance or other business subject to the commissioner's jurisdiction. Any such proceedings for suspension, revocation or refusal of any license or authority shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

~~(h)~~(i) When making an examination under this act, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants or other professionals and specialists as examiners, the reasonable cost of which shall be borne by the insurance company which or pharmacy benefits manager that is the subject of the examination.

~~(i)~~(j) Nothing contained in this act shall be construed to limit the commissioner's authority to:

(1) Terminate or suspend any examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this state:

~~(j) Nothing contained in this act shall be construed to limit the commissioner's authority to; or~~

(2) use and, if appropriate, to make public any final or preliminary examination report in the furtherance of any legal or regulatory action which the commissioner may, in the commissioner's sole discretion, deem appropriate.

(k) (1) No later than 30 days following completion of the examination or at such earlier time as the commissioner shall prescribe, the examiner in charge shall file with the department a verified written report of examination under oath. No later than 30 days following receipt of the verified report, the department shall transmit the report to the insurance company or pharmacy



benefits manager examined, together with a notice which shall afford such insurance company or pharmacy benefits manager examined a reasonable opportunity of not more than 30 days to make a written submission or rebuttal with respect to any matters contained in the examination report.

(2) Within 30 days of the end of the period allowed for the receipt of written submissions or rebuttals, the commissioner shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiners workpapers and enter an order:

(A) Adopting the examination report as filed or with modification or corrections. If the examination report reveals that the insurance company or pharmacy benefits manager is operating in violation of any law, regulation or prior order of the commissioner, the commissioner may order the insurance company or pharmacy benefits manager to take any action the commissioner considers necessary and appropriate to cure such violations; or

(B) rejecting the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation or information, and refile pursuant to subsection (k); or

(C) call and conduct a fact-finding hearing in accordance with K.S.A. 40-281, and amendments thereto, for purposes of obtaining additional documentation, data, information and testimony.

(3) All orders entered as a result of revelations contained in the examination report shall be accompanied by findings and conclusions resulting from the commissioner's consideration and review of the examination report, relevant examiner workpapers and any written submissions or rebuttals. Within 30 days of the issuance of the adopted report, the insurance company or pharmacy benefits manager shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders.

(4) Upon the adoption of the examination report, the commissioner shall hold the content of the examination report as private and confidential information for a period of 30 days except to the extent provided in paragraph (5). Thereafter, the commissioner may open the report for public inspection so long as no court of competent jurisdiction has stayed its publication.

(5) (A) Except as provided in paragraph (B), nothing contained in this act shall prevent or be construed as prohibiting the commissioner from disclosing the content of an examination report, preliminary examination report or results, or any matter relating thereto, at any time to:

- (i) The insurance department of this or any other state or country;
- (ii) law enforcement officials of this or any other state or agency of the federal government or any other country; or
- (iii) officials of any agency of another country.

(B) The commissioner shall not share any information listed in paragraph (A) unless the agency or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with this act.

(6) In the event the commissioner determines that regulatory action is appropriate as a result of any examination, the commissioner may initiate any proceedings or actions as provided by law.

(7) All working papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the commissioner or any other person in the course of an examination made under this act including analysis by the commissioner pertaining to either the financial condition or the market regulation of ~~a~~ an insurance company or pharmacy benefits manager must be given confidential treatment and are not subject to subpoena and may not be made public by the commissioner or any other person, except to the extent otherwise specifically provided in K.S.A. 45-215 et seq., and amendments thereto. Access may also be granted to the

national association of insurance commissioners and its affiliates. Such parties must agree in writing prior to receiving the information to provide to it the same confidential treatment as required by this section, unless the prior written consent of the insurance company or pharmacy benefits manager to which it pertains has been obtained.

(8) Whenever it appears to the commissioner of insurance from such examination or other satisfactory evidence that the solvency of any such insurance company is impaired, or that it is doing business in violation of any of the laws of this state, or that its affairs are in an unsound condition so as to endanger its policyholders, the commissioner of insurance shall give the company a notice and an opportunity for a hearing in accordance with the provisions of the Kansas administrative procedure act. If the hearing confirms the report of the examination, the commissioner shall suspend the certificate of authority of such company until its solvency shall have been fully restored and the laws of the state fully complied with. The commissioner may, if there is an unreasonable delay in restoring the solvency of such company and in complying with the law, revoke the certificate of authority of such company to do business in this state. Upon revoking any such certificate the commissioner shall commence an action to dissolve such company or to enjoin the same from doing or transacting business in this state.

Sec. 10. K.S.A. 2025 Supp. 40-3821 is hereby amended to read as follows: 40-3821. (a) ~~K.S.A. 40-3821 through 40-3828, and amendments thereto, and K.S.A. 2025 Supp. 40-3828a et seq., and amendments thereto, shall be known and may be cited as the pharmacy benefits manager licensure~~ Kansas consumer prescription protection and accountability act.

(b) ~~On and after January 1, 2023, a~~ No person shall ~~not~~ perform, act or do business in this state as a pharmacy benefits manager unless such person has a valid license issued by the commissioner pursuant to this act.

(c) This act shall apply to any pharmacy benefits manager that provides claims

processing services, other prescription drug or device services, or both, to covered persons who are residents of this state.

(d) ~~This act shall not apply to any pharmacy benefits manager that holds a certificate of registration as an administrator pursuant to K.S.A. 40-3810, and amendments thereto.~~ This act shall also apply to any audit of the records of a pharmacy conducted by a managed care company, third-party payer, pharmacy benefits manager or any entity that represents a covered entity or health benefit plan and the registration of auditing entities.

(e) A license issued in accordance with the ~~pharmacy benefits manager licensure~~ Kansas consumer prescription protection and accountability act shall be nontransferrable.

Sec. 11. K.S.A. 2025 Supp. 40-3822 is hereby amended to read as follows: 40-3822. As used in this act:

(a) "Act" means the ~~pharmacy benefits manager licensure~~ Kansas consumer prescription protection and accountability act.

(b) "Affiliate" means a pharmacy, pharmacist or pharmacy technician which, either directly or indirectly through one or more intermediaries:

(1) Has an investment or ownership interest in a pharmacy benefits manager licensed under this chapter;

(2) shares common ownership with a pharmacy benefits manager licensed under this chapter; or

(3) has an investor or ownership interest holder that is a pharmacy benefits manager licensed under this article.

(c) "Auditing entity" means a person that performs a pharmacy audit, including a pharmacy benefits manager, managed care organization or third-party payer.

~~(b)(d)~~ (d) "Commissioner" means the commissioner of insurance as defined by K.S.A. 40-

102, and amendments thereto.

~~(e)~~(c) (1) "Covered entity" means:

~~(A) A nonprofit hospital or medical service corporation, health insurer, health benefit plan or health maintenance organization;~~

~~(B) a health program administered by a department or the state in the capacity of provider of health coverage; or~~

~~(C) an employer, labor union or other group of persons organized in the state that provides health coverage to covered individuals who are employed or reside in the state~~ a health insurance company, health maintenance organization, hospital, medical or dental corporation, healthcare corporation, any entity that provides, administers or manages a self-funded health benefit plan including a governmental plan or any other entity that provides prescription drug coverages unless specifically excluded in paragraph (2).

(2) "Covered entity" does not include ~~any~~:

~~(A) Self-funded plan that is exempt from state regulation pursuant to ERISA;~~

~~(B) plan issued for coverage for federal employees; or~~

~~(C) health plan that provides coverage only for accidental injury, specified disease, hospital indemnity, medicare supplement, disability income, long-term care or other limited benefit health insurance policies and contracts~~ insurers that provide coverage under a policy of property or casualty insurance or workers compensation insurance.

~~(d)~~(f) "Covered person" means a member, policyholder, subscriber, enrollee, beneficiary, dependent or other individual participating in a health benefit plan.

(g) "Defined cost sharing" means a deductible payment, copayment or coinsurance amount imposed on an enrollee for a covered prescription drug under the enrollee's health plan.

~~(e)~~(h) "Department" means the ~~insurance department~~ Kansas department of insurance.

~~(f)~~(i) "ERISA" means the federal employee retirement income security act of 1974.

~~(g)~~(j) "Health benefit plan" ~~means the same as defined in K.S.A. 40-4602, and amendments thereto~~ or "health plan" means any hospital or medical expense policy, health, hospital or medical service corporation contract, a plan provided by a municipal group-funded pool, a policy or agreement entered into by a health insurer or a health maintenance organization contract offered by an employer or any certificate issued under any such policies, contracts or plans. "Health benefit plan" or "health plan" does not include policies or certificates covering only accident, credit, dental, disability income, long-term care, hospital indemnity, medicare supplement, specified disease, vision care, coverage issued as a supplement to liability insurance, insurance arising out of a workers compensation or similar law, automobile medical-payment insurance or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

~~(h)~~(k) "Health insurer" means the same as defined in K.S.A. 40-4602, and amendments thereto.

~~(i) "Maximum allowable cost" or "MAC" means any term or methodology that a pharmacy benefits manager or a healthcare insurer may use to establish the maximum amount that a pharmacy benefits manager will reimburse a pharmacy or a pharmacist for generic drugs~~  
(l) "Misfill" means a prescription:

(1) That was not dispensed;

(2) error;

(3) that had a request by the pharmacy to authorize the filling of such prescription that was denied by the prescriber; or

(4) that had an extra dispensing fee charged.

(m) "National average drug acquisition cost" means the monthly survey of retail pharmacies conducted by the federal centers for medicare and medicaid services to determine the average acquisition cost for medicaid-covered outpatient drugs.

(n) "Nonproprietary drug" means a drug containing any quantity of any controlled substance or any drug that is required by any applicable federal or state law to be dispensed only by prescription.

(o) "Person" means an individual, partnership, corporation, organization or other business entity.

(p) "Pharmacy audit" means an audit conducted by or on behalf of an auditing entity of any records of a pharmacy for prescription or nonproprietary drugs dispensed by a pharmacy to a covered person.

~~(j)~~(q) "Pharmacy benefits management" means:

(1) Any of the following services provided with regard to the administration of the following pharmacy benefits:

(A) Mail service pharmacy;

(B) claims processing, retail network management and payment of claims to pharmacies for prescription drugs dispensed to covered individuals;

(C) clinical formulary development and management services;

(D) rebate contracting and administration;

(E) certain patient compliance, therapeutic intervention and generic substitution programs; or

(F) disease management programs involving prescription drug utilization; and

(2) (A) the procurement of prescription drugs by a prescription benefits manager at a negotiated rate for dispensation to covered individuals within this state; or

(B) the administration or management of prescription drug benefits provided by a covered insurance entity for the benefit of covered individuals.

~~(k)(r)~~ "Pharmacy benefits manager" means a person, business or other entity that performs pharmacy benefits management. "Pharmacy benefits manager" includes any person or entity acting in a contractual or employment relationship for a pharmacy benefits manager in the performance of pharmacy benefits management for a covered entity. "Pharmacy benefits manager" does not include a covered insurance entity.

~~(l) "Person" means an individual, partnership, corporation, organization or other business entity(s)~~ "Pharmacy record" means any record stored electronically or as a hard copy by a pharmacy relating to the provision of prescription or nonproprietary drugs, pharmacy services or other component of pharmacist care that is included in the practice of pharmacy as defined in K.S.A. 65-1626a, and amendments thereto.

~~(t) "Pharmacy services administration organization" means any entity that contracts with a pharmacy to assist with covered entity interactions and that may provide a variety of other administrative services, including contracting with pharmacy benefits managers on behalf of pharmacies and managing pharmacies' claims payments from covered entities.~~

~~(u) "Rebate" means any and all payments that accrue to a pharmacy benefits manager or such pharmacy benefits manager's health plan client, directly or indirectly, from a pharmaceutical manufacturer, including, but not limited to, discounts, administration fees, credits, incentives or penalties associated directly or indirectly in any way with claims administered on behalf of a health plan client. "Rebate" does not include any discount or payment that may be provided to or made to any 340B entity through such program.~~

Sec. 12. K.S.A. 2025 Supp. 40-3823 is hereby amended to read as follows: 40-3823. (a) No person shall act or operate as a pharmacy benefits manager without first obtaining a valid



license issued by the commissioner.

(b) Each person seeking a license to act as a pharmacy benefits manager shall file with the commissioner an application for a license upon a form to be furnished by the commissioner. At a minimum, the application form shall include the following information:

- (1) The name, address and telephone number of the pharmacy benefits manager;
- (2) the name, address, official position and professional qualifications of each individual who is responsible for the conduct of the affairs of the pharmacy benefits manager, including all members of the board of directors, board of trustees, executive committee, other governing board or committee, the principal officers in the case of a corporation, the partners or members in the case of a partnership or association;
- (3) the name and address of the applicant's agent for service of process in the state;
- (4) the name, address, phone number, email address and official position of the employee who will serve as the primary contact for the department;
- (5) a copy of the pharmacy benefits manager's corporate charter, articles of incorporation or other charter document;
- (6)—~~a~~ any template contract including a dispute resolution process, that ultimately involves an independent fact finder between:
  - (A) The pharmacy benefits manager and the health insurer; or
  - (B) the pharmacy benefits manager and the pharmacy or a pharmacy's contracting agent;~~and~~
- (7) an affidavit, executed by an officer or director of the pharmacy benefits manager affirming that any template contract submitted pursuant to this subsection is the accurate and complete contract used; and
- (8) a network adequacy report on a form prescribed by the department through rules

and regulations.

(c) A nonrefundable application fee in an amount of not to exceed \$2,500. Not later than December 1 of each year, the commissioner shall set and cause to be published in the Kansas register such fee for the next calendar year.

(d) The licensee shall inform the commissioner, by any means acceptable to the commissioner, of any material change in the information required by this subsection within 90 days of such change. Failure to timely inform the commissioner of a material change may result in a penalty against the licensee ~~in the amount of \$500~~ an amount of not to exceed \$2,000 per occurrence.

(e) Within 90 days after receipt of a completed application, the network adequacy report and the applicable license fee, the commissioner shall review the application and issue a license if the applicant is deemed qualified under this section. If the commissioner determines that the applicant is not qualified, the commissioner shall notify the applicant and shall specify the reason for the denial.

(f) (1) All documents, materials or other information and copies thereof in the possession or control of the department or any other governmental entity that are obtained by or disclosed to the commissioner or any other person in the course of an application, examination or investigation made pursuant to this act shall be confidential by law and privileged, shall not be subject to any open records, freedom of information, sunshine or other public record disclosure laws and shall not be subject to subpoena or discovery.

(2) The provisions of paragraph (1) shall only apply to the disclosure of the confidential documents described in paragraph (1) by the department or any other governmental entity and shall not be construed to create any privilege in favor of any other party.

(3) The provisions of this subsection shall expire on July 1, 2027, unless the legislature

reviews and reenacts this provision pursuant to K.S.A. 45-229, and amendments thereto, prior to July 1, 2027.

Sec. 13. K.S.A. 2025 Supp. 40-3824 is hereby amended to read as follows: 40-3824. (a) Each pharmacy benefits manager license shall expire on March 31 of each year and may be renewed annually on the request of the licensee. The application for renewal shall be submitted on a form furnished by the commissioner and accompanied by a renewal fee of not to exceed \$2,500. The application for renewal shall be in such form and contain such matters as the commissioner prescribes.

(b) (1) Within 90 days after receipt of a completed renewal application, the commissioner shall review the application and any relevant information received pursuant to the provisions of this act, including quarterly and annual reports. If the commissioner determines the application is incomplete or the pharmacy benefits manager is not in compliance with the act, the commissioner shall notify the applicant and shall specify the reason for the denial of the renewal application.

(2) If a registered auditing entity fails to provide a completed application for renewal by March 31, or if the license renewal fee is not paid by March 31, then a penalty fee shall be assessed in an amount of not to exceed \$250. The auditing entity shall remit the renewal fee plus the penalty fee before the commissioner issues such auditing entity's registration renewal.

(c) If a pharmacy benefits manager fails to provide a completed application for renewal by March 31, or if a license renewal fee is not paid by the prescribed date March 31, then the amount of the fee, plus a penalty fee shall be assessed in an amount of not to exceed \$2,500 shall be paid. The pharmacy benefits manager's license may be revoked or suspended by the commissioner until the renewal fee and any penalty assessed has been paid.

(e) Any person who performs or is performing any pharmacy benefits management

~~service shall be required to obtain a license as a pharmacy benefits manager from the commissioner not later than January 1, 2023, in order to continue to do business in Kansas. The pharmacy benefits manager shall remit the renewal fee plus the penalty fee before the commissioner issues such pharmacy benefits manager's license renewal.~~

(d) The pharmacy benefits manager's license may be revoked or suspended by the commissioner until the renewal fee and any penalty assessed has been paid.

~~(d)~~(e) Not later than December 1 of each year, the commissioner shall set and cause to be published in the Kansas register the fees required pursuant to this section for the next calendar year.

Sec. 14. K.S.A. 2025 Supp. 40-3825 is hereby amended to read as follows: 40-3825. ~~(a)~~ In accordance with the provisions of the rules and regulations filing act, K.S.A. 77-415 et seq., and amendments thereto, the commissioner may adopt, amend and revoke rules and regulations governing the administration and enforcement of this act, limited to:

- ~~(1)~~(a) The content of the application form;
- ~~(2)~~(b) the content of any other form or report required to implement this act; and
- ~~(3)~~(c) such other rules and regulations as the commissioner may deem necessary to carry out the provisions of this act.

~~(b) The commissioner shall adopt, amend and revoke all such necessary rules and regulations not later than July 1, 2023.~~

Sec. 15. K.S.A. 2025 Supp. 40-3826 is hereby amended to read as follows: 40-3826. (a) If the commissioner has reason to believe that a pharmacy benefits manager has been engaged in this state or is engaging in this state in activity that violates the ~~pharmacy benefits manager~~ license Kansas consumer prescription protection and accountability act, the commissioner shall issue and serve upon such pharmacy benefits manager a statement of the charges of any such

violation and conduct a hearing thereon in accordance with the provisions of the Kansas administrative procedure act.

(b) If, after such a hearing, the commissioner determines that the pharmacy benefits manager charged has violated the act, the commissioner may, in the exercise of discretion, order any one or more of the following:

(1) (A) Payment of a monetary penalty in an amount of not ~~more than~~ to exceed \$1,000 for each and every act or violation. ~~The total of the monetary penalties for such violations shall not exceed \$10,000;~~

(B) if the pharmacy benefits manager knew or reasonably should have known that such manager was in violation of this act, payment of a monetary penalty in an amount of not ~~more than~~ to exceed \$5,000 for each and every act or violation. ~~The total of the monetary penalties for such violations shall not exceed \$50,000 in any six-month period;~~

(2) if such manager knew or reasonably should have known such person was in violation of this act, the suspension or revocation of the pharmacy benefits manager's license; or

(3) the assessment of any costs incurred as a result of conducting the administrative hearing authorized by the provisions of this section against the pharmacy benefits manager.

(c) As used in this section, "costs" includes witness fees, mileage allowances, any costs associated with reproduction of documents that become a part of the hearing record and expenses of making a record of the hearing.

(d) (1) If the deadline for filing a petition for review has expired and no such petition has been filed, the commissioner may reopen and modify or set aside any portion or the entirety of any administrative order issued under this section.

(2) The reopening of any such order may occur if, in the commissioner's opinion, the conditions of fact or law have changed to warrant such an action or if such an action is warranted

in the public interest.

(e) In addition to any other penalty provided by this act, any person who acts as a pharmacy benefits manager without being licensed as required by this act shall be subject to a fine of ~~\$5,000~~ not to exceed \$100,000 for the period in which the pharmacy benefits manager is found to be in violation.

Sec. 16. K.S.A. 2025 Supp. 40-3827 is hereby amended to read as follows: 40-3827. (a) There is hereby established in the state treasury the pharmacy benefits manager licensure fund. Such fund shall be administered by the commissioner for costs related to administering the ~~pharmacy benefits manager licensing~~ Kansas consumer prescription protection and accountability act. All expenditures from the pharmacy benefits manager licensure fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the commissioner or by the commissioner's designee.

(b) The commissioner shall remit all moneys received by or for the commissioner under the provisions of this act to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount thereof in the state treasury and such amount shall be credited to the pharmacy benefits manager licensure fund.

Sec. 17. K.S.A. 2025 Supp. 40-3828a is hereby amended to read as follows: 40-3828a. (a) A pharmacy benefits manager's license may be revoked, suspended or limited, the licensee may be censured or placed under probationary conditions or an application for a license or for reinstatement of a license may be denied upon a finding that the:

(1) Applicant or licensee committed fraud or misrepresentation in applying for or securing an original, renewal or reinstated license;

(2) licensee has violated any lawful rule or regulation promulgated by the

commissioner or violated any lawful order or directive of the commissioner previously entered by the commissioner;

(3) pharmacy benefits manager has engaged in fraudulent activity that constitutes a violation of state or federal law;

(4) licensee has failed to furnish any information legally requested by the commissioner to the commissioner or the commissioner's investigators or representatives, including information requested during an examination pursuant to section 4, and amendments thereto;

(5) pharmacy benefits manager has been determined by the commissioner to be in violation of or noncompliance with state or federal law;~~or~~

(6) pharmacy benefits manager has failed to timely submit a renewal application and the information required under K.S.A. 40-3824, and amendments thereto. In lieu of a denial of a renewal application, the commissioner may permit the pharmacy benefits manager to submit to the commissioner a corrective action plan to correct or cure any deficiencies; or

(7) pharmacy benefits manager has failed to timely submit the reporting required by section 3, and amendments thereto.

(b) This section shall be a part of and supplemental to the ~~pharmacy benefits manager~~ licensee Kansas prescription protection and accountability act.

Sec. 18. K.S.A. 40-3831 is hereby amended to read as follows: 40-3831. (a) ~~This section shall be known and may be cited as the Kansas pharmacy patients fair practices act.~~

~~(b) As used in this section:~~

~~(1) "Covered person" means the same as defined in K.S.A. 40-3822, and amendments thereto.~~

~~(2) "Health carrier" means the same as defined in K.S.A. 40-2,195, and amendments thereto.~~

~~(3) "Pharmacy benefits manager" means the same as defined in K.S.A. 40-3822, and amendments thereto.~~

~~(e)~~ (1) ~~Co-payments~~ Copayments applied by a health carrier for a prescription drug ~~may~~ shall not exceed the total submitted charges by the network pharmacy.

(2) A pharmacy or pharmacist shall have the right to provide a covered person with information regarding the amount of the covered person's cost share for a prescription drug. Neither a pharmacy nor a pharmacist shall be proscribed by a pharmacy benefits manager from discussing any such information or for selling a more affordable alternative to the covered person if such an alternative is available.

~~(d)~~(b) (1) This section applies to any contract between a pharmacy benefits manager and a pharmacy, a pharmacy services administration organization or a group purchasing organization ~~that is entered into or renewed on and after January 1, 2019.~~

(2) The provisions of this section shall not apply to any policy or certificate that provides coverage for any specified disease, specified accident or accident only coverage, credit, dental, disability income, hospital indemnity, long-term care insurance as defined by K.S.A. 40-2227, and amendments thereto, vision care or any other limited supplemental benefit nor to any medicare supplement policy of insurance as defined by the commissioner ~~of insurance~~ by rule and regulation, any coverage issued as a supplement to liability insurance, workers compensation or similar insurance, automobile medical-payment insurance or any insurance under which benefits are payable with or without regard to fault, whether written on a group, blanket or individual basis.

Sec. 19. K.S.A. 40-222, 40-3828, 40-3831, 65-16,121, 65-16,122, 65-16,123, 65-16,124, 65-16,125 and 65-16,126 and K.S.A. 2025 Supp. 40-202, 40-3821, 40-3822, 40-3823, 40-3824, 40-3825, 40-3826, 40-3827, 40-3828a, 40-3829 and 40-3830 are hereby repealed.";



Also on page 12, in line 6, by striking "Kansas register" and inserting "statute book";

And by renumbering sections accordingly;

On page 1, in the title, in line 1, by striking all after the semicolon; by striking all in lines 2 through 4; in line 5, by striking "75-4101" and inserting "enacting the Kansas consumer prescription protection and accountability act; providing for the regulation of pharmacy benefits managers; requiring the registration of auditing entities; establishing procedures and requirements for the conduct of pharmacy audits, pharmacy benefits manager reporting and examinations; amending K.S.A. 40-222 and 40-3831 and K.S.A. 2025 Supp. 40-202, 40-3821, 40-3822, 40-3823, 40-3824, 40-3825, 40-3826, 40-3827 and 40-3828a"; also in line 5, after "sections" by inserting "also repealing K.S.A. 40-3828, 65-16,121, 65-16,122, 65-16,123, 65-16,124, 65-16,125 and 65-16,126 and K.S.A. 2025 Supp. 40-3829 and 40-3830";

And your committee on conference recommends the adoption of this report.

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Conferees on part of House

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Conferees on part of Senate