

HOUSE BILL No. 2688

By Committee on Insurance

2-14

1 AN ACT concerning pharmacy benefits managers; enacting the continued
2 access to community pharmacy act; amending K.S.A. 2013 Supp. 40-
3 3822 and repealing the existing section.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 New Section 1. The provisions of sections 1 through 5, and
7 amendments thereto, shall be known and may be cited as the continued
8 access to community pharmacy act. This act shall apply to all contracts
9 between pharmacies and pharmacy benefits managers that are entered into,
10 renewed or extended on and after July 1, 2014.

11 New Sec. 2. As used in the continued access to community pharmacy
12 act:

13 (a) "Covered individual" means an individual receiving prescription
14 medication coverage or reimbursement provided by a health insurance
15 policy, government program or pharmacy benefits manager;

16 (b) "list" means the list of drugs for which maximum allowable costs
17 have been established;

18 (c) "mail order pharmacy" means a pharmacy whose primary
19 business is to receive prescriptions by mail, telefax or through electronic
20 submissions and to dispense medication to patients through the use of the
21 United States mail or other common or contract carrier services and
22 provides any consultation with patients electronically rather than face-to-
23 face;

24 (d) "maximum allowable cost" means the maximum amount that a
25 pharmacy benefits manager will reimburse a pharmacy for the cost of a
26 drug;

27 (e) "multiple source drug" means a therapeutically equivalent drug
28 that is available from at least three manufacturers;

29 (f) "network pharmacy" means a pharmacy registered under K.S.A.
30 65-1643 or 65-1657, and amendments thereto, that contracts with a
31 pharmacy benefits manager;

32 (g) "pharmacy benefits manager" means an entity that contracts with
33 third-party pharmacies on behalf of a health plan, as defined in 45 C.F.R. §
34 160.103, as in effect on July 1, 2014, for the third-party pharmacy to
35 provide pharmacy services to such health plans. Such an entity determines
36 reimbursement to pharmacies for the pharmacy services provided.

1 (i) "retail community pharmacy" means a pharmacy that is open to
2 the public, serves walk-in customers and makes available face-to-face
3 consultation between licensed pharmacists and persons to whom
4 medications are dispensed; and

5 (j) "therapeutically equivalent" means drugs that are approved by the
6 United States food and drug administration for interstate distribution and
7 the food and drug administration has determined that the drugs will
8 provide essentially the same efficacy and toxicity when administered to an
9 individual in the same dosage regimen.

10 New Sec. 3. Any pharmacy benefits manager under contract to a
11 health insurance plan or under the control of a health insurance plan shall:

12 (a) Permit each covered individual to fill any mail order covered
13 prescription, at such covered individual's option, at any mail order
14 pharmacy or network participating non-mail order retail pharmacy if the
15 network participating non-mail order retail pharmacy agrees to accept a
16 price that is comparable to that of the mail order pharmacy;

17 (b) refrain from imposing a differential copayment, additional fee or
18 other condition on any covered individual who elects to fill such covered
19 individual's prescription at an in-network retail community pharmacy that
20 is not similarly imposed on covered individuals electing to fill a
21 prescription from a mail order pharmacy; and

22 (c) expressly disclose to the health insurance plan sponsor in the
23 contract, if the pharmacy benefits manager retains all or a greater portion
24 of a drug manufacturers' rebate amount or any additional direct or indirect
25 remuneration from any third party, for drugs dispensed through the
26 pharmacy benefits manager's own mail order pharmacy than those
27 dispensed through a retail pharmacy.

28 New Sec. 4. (a) A pharmacy benefits manager:

29 (1) May not place a drug on a list unless there are at least three
30 therapeutically equivalent, multiple source drugs or at least one generic
31 drug available from only one manufacturer, available for purchase, and not
32 obsolete or temporarily unavailable, by network pharmacies from national
33 or regional wholesalers;

34 (2) shall ensure that all drugs on a list are generally available for
35 purchase by pharmacies in this state from national or regional wholesalers;

36 (3) shall ensure that all drugs on a list are not obsolete;

37 (4) shall make available to each network pharmacy at the beginning
38 of the term of a contract, and upon renewal of the contract, the nationally
39 recognized comprehensive data sources utilized to determine the
40 maximum allowable cost of the pharmacy benefits manager;

41 (5) shall make a list available to a network pharmacy upon request in
42 a format that is readily accessible to and usable by the network pharmacy;

43 (6) shall update each list maintained by the pharmacy benefits

1 manager every seven business days and make the updated lists, including
2 all changes in the price of drugs, available to network pharmacies in a
3 readily accessible and usable format;

4 (7) shall ensure that dispensing fees are not included in the
5 calculation of maximum allowable cost.

6 (b) A pharmacy benefits manager shall establish a process by which a
7 network pharmacy may appeal its reimbursement for a drug subject to
8 maximum allowable cost. A network pharmacy may appeal a maximum
9 allowable cost if the reimbursement for the drug is less than the net
10 amount that the network pharmacy paid to the supplier of the drug. An
11 appeal requested under this section must be completed within 30 calendar
12 days of the pharmacy making the claim for which appeal has been
13 requested.

14 (c) A pharmacy benefits manager shall provide as part of the appeals
15 process established under subsection (b):

16 (1) A telephone number at which a network pharmacy may contact
17 the pharmacy benefits manager and speak with an individual who is
18 responsible for processing appeals;

19 (2) a final response to an appeal of a maximum allowable cost within
20 seven business days; and

21 (3) if the appeal is denied, the reason for the denial and the national
22 drug code of a drug that may be purchased by similarly situated
23 pharmacies at a price that is equal to or less than the maximum allowable
24 cost.

25 (d) If an appeal is upheld under this section, the pharmacy benefits
26 manager shall make an adjustment on the date that the pharmacy benefits
27 manager makes the determination. The pharmacy benefits manager shall
28 make the adjustment effective for all similarly situated pharmacies in this
29 state that are within the network.

30 New Sec. 5. Any pharmacy benefits manager who violates the
31 provisions of this act shall be subject to a fine of \$1,000 for each violation
32 and such pharmacy benefits manager shall have its registration under the
33 pharmacy benefits manager registration act revoked.

34 Sec. 6. K.S.A. 2013 Supp. 40-3822 is hereby amended to read as
35 follows: 40-3822. For purposes of this act: (a) "Commissioner" means the
36 commissioner of insurance as defined by K.S.A. 40-102, and amendments
37 thereto.

38 (b) (1) "Covered entity" means:

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

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

43 (C) an employer, labor union or other group of persons organized in

1 the state that provides health coverage to covered individuals who are
2 employed or reside in the state.

3 (2) Covered entity shall not include any:

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

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

7 (C) health plan that provides coverage only for accidental injury,
8 specified disease, hospital indemnity, medicare supplement, disability
9 income, long-term care or other limited benefit health insurance policies
10 and contracts.

11 (c) "Covered person" means a member, policyholder, subscriber,
12 enrollee, beneficiary, dependent or other individual participating in a
13 health benefit plan.

14 (d) "Pharmacy benefits management" means:

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

17 (A) Mail service pharmacy;

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

21 (C) clinical formulary development and management services;

22 (D) rebate contracting and administration;

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

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

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

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

33 (e) ~~"Pharmacy benefits manager" means a person, business or other~~
34 ~~entity that performs pharmacy benefits management. Pharmacy benefits~~
35 ~~manager includes any person or entity acting in a contractual or~~
36 ~~employment relationship for a pharmacy benefits manager in the~~
37 ~~performance of pharmacy benefits management for a covered entity.~~

38 ~~The term "pharmacy benefits manager" shall not include a covered~~
39 ~~insurance entity an entity that contracts with third-party pharmacies on~~
40 ~~behalf of a health plan, as defined in 45 C.F.R. § 160.103, as in effect on~~
41 ~~July 1, 2014, for the third-party pharmacy to provide pharmacy services to~~
42 ~~such health plans. Such an entity determines reimbursement to pharmacies~~
43 ~~for the pharmacy services provided.~~

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

3 Sec. 7. K.S.A. 2013 Supp. 40-3822 is hereby repealed.

4 Sec. 8. This act shall take effect and be in force from and after its
5 publication in the statute book.