

Pharmacy Benefits Managers—Maximum Allowable Cost Pricing and Reimbursement; Sub. for SB 103

Sub. for SB 103 enacts new law relating to contracts between pharmacies and pharmacy benefits managers (PBMs).

Definitions

The bill establishes the following definitions relating to reimbursements for certain drugs and documentation of pricing associated with those drugs:

- “List” means the list of drugs for which maximum allowable costs have been established;
- “Maximum allowable cost” or “MAC” means the maximum amount that a PBM will reimburse a pharmacy for the cost of a generic drug;
- “Network pharmacy” means a pharmacy that contracts with a PBM; and
- “Pharmacy benefits manager” or “PBM” is assigned its meaning from the Pharmacy Benefits Manager Registration Act (Act). The existing definition for a PBM follows:
 - 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.

Under the Act, the definition of PBM specifies a number of services associated with the administration of certain pharmacy benefits, including mail service pharmacy; claims processing, retail network management, and payment of claims to pharmacies for prescription drugs dispensed to covered individuals; clinical formulary development and management services; rebate contracting and administration; certain patient compliance, therapeutic intervention, and generic substitution programs; disease management programs involving prescription drug utilization; and the procurement of prescription drugs at a negotiated rate for dispensation to covered individuals and the administration or management of prescription drug benefits provided by a covered insurance entity for the benefit of covered individuals. [KSA 2015 Supp. 40-3822(d)]

Drug Pricing, MAC List, Appeals Process

The bill prohibits a PBM from placing a drug on a MAC list unless there are at least two therapeutically equivalent multi-source generic drugs, or at least one generic drug available from at least one manufacturer, generally available for purchase by network pharmacies from national or regional wholesalers, and the drug is not obsolete. The bill outlines additional requirements for PBMs, including:

- Providing, to each network pharmacy at the beginning of a contract term and upon request thereafter, the sources utilized to determine the MAC price;
- Providing a process for each network pharmacy provider to readily access the maximum allowable price specific to that provider;
- Reviewing and updating each applicable MAC list every seven business days and applying the updates to reimbursements by no later than one business day; and
- Ensuring that dispensing fees are not included in the calculation of MAC.

Appeals Process

The bill also requires each PBM to establish an appeal process to permit a network pharmacy to appeal reimbursement for a drug subject to MAC as outlined:

- The network pharmacy will be required to file an appeal no later than ten business days after the fill date; and
- The PBM will be required to provide a response to the appealing network pharmacy no later than ten business days after receiving an appeal request containing information sufficient for the PBM to process the appeal, as specified by the contract.

If the appeal is upheld, the PBM will be required to:

- Make the adjustment in the drug price effective no later than one business day after the appeal is resolved;
- Make the adjustment applicable to all similarly situated network pharmacy providers, as determined by the plan sponsor or PBM, as appropriate; and
- Permit the appealing pharmacy to reverse and rebill the appealed claim.

If the appeal is denied, the PBM will be required to provide the appealing pharmacy the National Drug Code number from a national or regional wholesaler operating in Kansas where the drug is generally available for purchase at a price equal to or less than the MAC and, when applicable, may be substituted lawfully.