SESSION OF 2016

SUPPLEMENTAL NOTE ON SUBSTITUTE FOR SENATE BILL NO. 103

As Recommended by Senate Committee on Financial Institutions and Insurance

Brief*

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

Definitions

The bill would establish the following new 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.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at http://www.kslegislature.org

> 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 a 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 would prohibit 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 would outline 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 would require each PBM to establish an appeal process that would permit a network pharmacy to appeal reimbursement for a drug subject to MAC as outlined:

- The network pharmacy would be required to file an appeal no later than ten business days after the fill date; and

- The PBM would 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 would 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 would 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.

Background

The Senate Committee on Financial Institutions and Insurance recommended the introduction of a substitute bill. The substitute bill incorporates a balloon amendment submitted by parties providing testimony to the Senate Committee in 2015 and to the 2015 interim Special Committee on Insurance.

The bill was introduced by the Senate Committee. The Senate Committee held a hearing on the bill in February 2015. Proponents of the original bill included representatives of the Kansas Pharmacists Association (KPhA), Funk Pharmacy, and Sabetha Health Mart. Written testimony was submitted by representatives of Genoa Healthcare and the National Community Pharmacists Association and by a private citizen. The proponents generally stated the bill would create transparency and predictability of multiple source drugs and their reimbursement rates on the MAC list. One pharmacist conferee explained pharmacies have no prior knowledge of reimbursement from the PBM until a claim is processed. This process occurs just prior to the sale of the prescription drug to the patient and with a “take-it-or-leave-it” contract with a PBM, the pharmacy cannot refuse to fill the prescription based on reimbursement that is below its acquisition cost.

Opponents appearing before the Senate Committee on the original bill included representatives of America’s Health

Insurance Plans (AHIP), CVS Health, Express Scripts, and Prime Therapeutics. Written testimony was submitted by the President of the Kansas Chamber of Commerce. The opponents generally stated the original bill minimizes the effectiveness of the MAC list pricing tool and removes incentives for pharmacies to negotiate competitive purchase prices for generic drugs from manufacturers and wholesalers. One PBM representative further explained MAC pricing was developed by state Medicaid programs after audits indicated there were overpayments for generic medications. The representative indicated, at present, 46 Medicaid programs, multiple federal programs, and most private payers use their own MAC processes.

The Senate Committee took no action on the bill, as introduced, and recommended a request be directed to the Legislative Coordinating Council. The Committee request for study by an interim committee was approved and the following topic was assigned to the Special Committee on Insurance: "The Committee is to review 2015 SB 103 and relevant issues associated with pharmacy benefits management, including MAC pricing of generic drugs, and the implications for Kansas pharmacies and health plans." Following review and discussion on the topic, the Special Committee recommended the insurance committees of the Senate and House take up 2015 SB 103 or a compromise replacement bill early in the 2016 Session.

In February 2016, representatives of the KPhA and Sabetha Health Mart, Express Scripts, and Prime Therapeutics appeared in support of a proposed substitute bill. Proponents noted the substitute bill represents a year of negotiations and, as presented, will make available the MAC price charged to the plan sponsor and reimbursed to the pharmacy in a timely fashion. They said the bill would increase the transparency of and broaden the list of drugs subject to MAC and would decrease overall drug costs. Written proponent testimony was submitted by representatives of AHIP and the Kansas Association of Chain Drug Stores.

At the time of the hearing on the proposed substitute bill, a request was made for clarification of the fiscal note prepared by the Division of the Budget prior to the 2015 Senate Committee hearing, which stated by restricting the use of MAC pricing, the Kansas Department of Health and Environment (KDHE) estimated the bill to have a potential increase to the state's healthcare plans of $3,145,976 in FY 2016 and $3,350,923 in FY 2017 and KanCare and the state Children's Health Insurance Program could experience similar cost increases. The language was reviewed by KDHE. An agency official indicated with the changes to the language (incorporated into the substitute bill), it appears there would be no fiscal impact on the programs within KDHE.