

**HOUSE BILL No. 2300**

By Committee on Health and Human Services

2-7

1 AN ACT concerning the state health care benefits program; enacting the  
2 Rx transparency act; relating to pharmacy benefits managers;  
3 requirements and fiduciary duties; audit of the pharmacy benefits  
4 management contract.

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

7 Section 1. (a) As used in this section:

8 (1) "Confidential information" means information provided to the  
9 covered entity by a pharmacy benefits manager designated as confidential  
10 by such pharmacy benefits manager and that may not be disclosed by the  
11 covered entity to any unauthorized person without the consent of the  
12 pharmacy benefits manager;

13 (2) "covered entity" means the division of health care finance of the  
14 department of health and environment and the state health care benefits  
15 program established pursuant to K.S.A. 75-6501 et seq., and amendments  
16 thereto;

17 (3) "covered individual" means a member, employee or an  
18 employee's dependent or plan participant of the state health care benefits  
19 program established pursuant to K.S.A. 75-6501 et seq., and amendments  
20 thereto;

21 (4) "generic drug" means a multisource generic drug as determined  
22 by the pharmacy benefits manager using a combination of data provided  
23 by a pricing source;

24 (5) "labeler" means an entity or person that receives prescription  
25 drugs from a manufacturer or wholesaler and repackages such drugs for  
26 later sale and that has a labeler code from the federal food and drug  
27 administration under 21 C.F.R 207.20;

28 (6) "pharmacy benefits management" means: (A) The procurement of  
29 prescription drugs at a negotiated rate for dispensation within the state to  
30 covered individuals; (B) the administration or management of prescription  
31 drug benefits provided by a covered entity for the benefit of covered  
32 individuals; or (C) any of the following services provided with regard to  
33 pharmacy benefits:

34 (i) Mail service pharmacy;

35 (ii) claims processing, retail network management and payment of  
36 claims to pharmacies for prescription drugs dispensed to covered

1 individuals;

2 (iii) clinical formulary development and management services;

3 (iv) certain patient compliance, therapeutic intervention and generic  
4 substitution programs;

5 (v) disease management programs; or

6 (vi) rebate contracting and administration; and

7 (7) "pharmacy benefits manager" means a publicly traded or privately  
8 held entity that performs pharmacy benefits management, acts in the best  
9 interest of the covered entity as it relates to pharmacy benefits  
10 management services and treats the covered entity in a fiduciary manner.  
11 The term includes a person or entity acting for a pharmacy benefits  
12 manager in a contractual or employment relationship in the performance of  
13 pharmacy benefits management for the covered entity and includes mail  
14 order and specialty pharmacies.

15 (b) Each pharmacy benefits manager owes a fiduciary duty to the  
16 covered entity and shall discharge such duty in accordance with the  
17 provisions of state and federal law. A pharmacy benefits manager shall act  
18 in the best interest of the covered entity at all times while carrying out its  
19 duties and obligations.

20 (c) Each pharmacy benefits manager shall perform its duties with  
21 care, skill, prudence and diligence and in accordance with the standards of  
22 conduct applicable to a fiduciary in an enterprise of like character and with  
23 like aims.

24 (d) Each pharmacy benefits manager shall discharge its duties with  
25 respect to the covered entity for the primary purpose of providing benefits  
26 to covered individuals and defraying the reasonable expenses of  
27 administrating the health plan.

28 (e) The pharmacy benefits manager shall not have any conflict of  
29 interest, such as direct or indirect ownership of pharmacy providers. Each  
30 pharmacy benefits manager shall notify the covered entity in writing of  
31 any activity, policy or practice of the pharmacy benefits manager that  
32 directly or indirectly presents any conflict of interest with the duties  
33 imposed by this section.

34 (f) Each pharmacy benefits manager shall provide to the covered  
35 entity all financial and utilization information requested by the covered  
36 entity relating to the providing of benefits to covered individuals through  
37 such covered entity and all financial and utilization information relating to  
38 services to such covered entity. A pharmacy benefits manager providing  
39 information under this subsection may designate that material as  
40 confidential. The pharmacy benefits manager shall agree to disclose all  
41 confidential information to the covered entity as a requirement of any  
42 agreement between the covered entity and the pharmacy benefits manager.  
43 The covered entity, upon receiving confidential information from the

1 pharmacy benefits manager, shall review such confidential information  
2 and determine if such confidential information restricts the covered entity  
3 from performing any of its duties pursuant to K.S.A. 75-6501 et seq., and  
4 amendments thereto. Information designated as confidential information  
5 by a pharmacy benefits manager and provided to a covered entity under  
6 this subsection shall not be disclosed by the covered entity to any person  
7 without the consent of the pharmacy benefits manager. Disclosure,  
8 however, may be ordered by a court of this state for good cause shown or  
9 made in a court filing under seal, unless or until otherwise ordered by the  
10 court. The attorney general may investigate potential violations of this  
11 subsection and may demand disclosure of information, but shall hold any  
12 proprietary information confidential. Information designated as  
13 confidential information under this subsection shall not be subject to  
14 disclosure under the Kansas open records act, K.S.A. 45-221 et seq., and  
15 amendments thereto. The provisions of this subsection shall not be subject  
16 to the provisions of K.S.A. 45-229(b), and amendments thereto.

17 (g) The pharmacy benefits manager may request to substitute a drug  
18 that costs more than the prescribed drug. The pharmacy benefits manager  
19 shall disclose to the covered entity the cost of both drugs and any benefit  
20 or payment directly or indirectly accruing to the pharmacy benefits  
21 manager as a result of the substitution. The substitution must be made for  
22 medical reasons that benefit the covered individual and benefit the covered  
23 entity.

24 (h) The pharmacy benefits manager shall transfer in full to the  
25 covered entity any benefit or payment in any form by the pharmacy  
26 benefits manager, either as a result of a prescription drug substitution  
27 under this section, or as a result of the pharmacy benefits manager's  
28 substitution of a lower-priced generic and therapeutically equivalent drug  
29 for a higher-priced drug.

30 (i) Each pharmacy benefits manager that derives any payment or  
31 benefit for the dispensation of prescription drugs with the state based on  
32 volume of sales for certain prescription drugs or classes or brands of drugs  
33 within the state shall pass such payments or benefits on in full to the  
34 covered entity.

35 (j) Each pharmacy benefits manager shall disclose to the covered  
36 entity all financial terms and arrangements for remuneration of any kind  
37 that apply between the pharmacy benefits manager and any prescription  
38 drug manufacturer or labeler, including, but not limited to, formulary  
39 management and drug switching programs, educational support, claims  
40 processing and pharmacy network fees that are charged from the retail  
41 pharmacies and data sales fees. Any pharmacy benefits manager providing  
42 information under this subsection may designate that material as  
43 confidential. The pharmacy benefits manager shall agree to disclose all

1 confidential information to the covered entity as a requirement of any  
2 agreement between the covered entity and the pharmacy benefits manager.  
3 The covered entity, upon receiving confidential information from the  
4 pharmacy benefits manager, shall review such confidential information  
5 and determine if such confidential information restricts the covered entity  
6 from performing any of its duties pursuant to K.S.A. 75-6501 et seq., and  
7 amendments thereto. Information designated as confidential information  
8 under this subsection shall not be disclosed by the covered entity to any  
9 person without the consent of the pharmacy benefits manager. Disclosure,  
10 however, may be ordered by a court of this state for good cause shown or  
11 made in a court filing under seal unless or until otherwise ordered by the  
12 court. The attorney general may investigate potential violations of this  
13 subsection and may demand disclosure of information, but shall hold any  
14 proprietary information confidential. Information designated as  
15 confidential information under this subsection shall not be subject to  
16 disclosure under the Kansas open records act, K.S.A. 45-221 et seq., and  
17 amendments thereto. The provisions of this subsection shall not be subject  
18 to the provisions of K.S.A. 45-229(b), and amendments thereto.

19 (k) Each pharmacy benefits manager shall require a contracted  
20 pharmacy to charge to a covered individual the pharmacy's usual and  
21 customary price of filling the prescription or the contracted copayment,  
22 whichever is less.

23 (l) Compliance with the requirements of this section is required in all  
24 contracts for pharmacy benefits management entered into by the covered  
25 entity. Each contract entered into between the covered entity and a  
26 pharmacy benefits manager shall include an enforcement provision in  
27 which a violation of any requirement of this section shall subject such  
28 pharmacy benefits manager to a penalty in an amount not to exceed 1% of  
29 the total pharmacy benefits management contract price for each violation.  
30 The maximum amount of all penalties under this section shall be an  
31 amount equal to 10% of the total pharmacy benefits management contract  
32 price.

33 (m) The division of health care finance of the department of health  
34 and environment shall develop appropriate audit procedures to determine  
35 if the pharmacy benefits manager for the state health care benefits program  
36 established pursuant to K.S.A. 75-6501 et seq., and amendments thereto,  
37 and the pharmacy benefits management contract entered into on behalf of  
38 the state health care benefits program complies with the requirements of  
39 this section and any other law applicable to pharmacy benefits managers.

40 (n) Whenever the division of health care finance of the department of  
41 health and environment issues a request for proposals concerning the  
42 pharmacy benefits management contract for the state health care benefits  
43 program, such request for proposals shall include the following provisions:

1       (1) The pharmacy benefits manager may be either a publicly traded or  
2 privately owned entity;

3       (2) the pharmacy benefits manager shall abide by a fiduciary duty;  
4 and

5       (3) the pharmacy benefits manager shall be able to accommodate at  
6 any time a plan sponsor at 110% of the size of the covered entity's contract  
7 while such contract is in operation.

8       (o) This section shall be known and may be cited as the Rx  
9 transparency act.

10       Sec. 2. This act shall take effect and be in force from and after its  
11 publication in the statute book.