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MEMORANDUM

To: House Committee on Insurance
From: Office of Revisor of Statutes
Date: February 17, 2010
Subject: Bill Brief for HB 2598

HB 2598 enacts the Pharmacy Benefits Manager Licensure Act, changing the requirement that pharmacy benefits managers, or PBMs, be registered with the Insurance Department, to being licensed by the Insurance Department. The bill also establishes new requirements of PBMs, pertaining to business practices and transparency.

The bill amends nine statutes within article 38 of chapter 40 of the Kansas Statutes Annotated, pertaining to third party administrators; four statutes within article 16 of chapter 65 of the Kansas Statutes Annotated that are part of the Pharmacy Audit Integrity Act; and creates 10 new sections.

Attached to this memo is a chart that briefly summarizes each section of the bill. The chart is organized by category, namely: Business Practices; Licensure; Transparency; Administration and Enforcement; and Definitions.

**PROVISIONS OF HB 2598
PREPARED FOR THE HOUSE COMMITTEE ON INSURANCE**

| Section | Location | New or Existing Law | Category | Subject | Summary |
|----------------|-----------------|----------------------------|--------------------|-------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4 | p. 6 | New | Business Practices | Fiduciary Duty | Establishes a fiduciary duty between a PBM and its health carrier clients. |
| 19 | p. 15-17 | Existing | Business Practices | K.S.A. 40-3830 | Establishes requirements for reimbursement and MAC pricing |
| 20 | p. 17-19 | Existing | Business Practices | K.S.A. 65-16,123 | Pertains to the pharmacy audit integrity act (K.S.A. 65-16,121 through 65-16,126) Establishes what an auditing entity is required to do when conducting an audit at a pharmacy. |
| 21 | p. 19 | Existing | Business Practices | K.S.A. 65-16,124 | Pertains to the pharmacy audit integrity act (K.S.A. 65-16,121 through 65-16,126) Establishes deadline for delivering audit reports and repayment or recoupment of funds. |
| 23 | p. 20 | Existing | Business Practices | K.S.A. 65-16,126 | Pertains to the pharmacy audit integrity act (K.S.A. 65-16,121 through 65-16,126) States that the pharmacy audit integrity act shall not apply to any audit initiated based on fraud, willful misrepresentation or abuse. To claim exemption, the audit entity must have sufficient documentation to substantiate such fraud or willful misrepresentation. |
| 5 | p. 6-7 | New | Business Practices | Network Adequacy | Requires that PBMs provide adequate and accessible retail pharmacy networks and establishes network adequacy requirements. |
| 10 | p. 10 | New | Business Practices | Retroactive Adjustments | Prohibits a PBM from retroactively reducing an already reimbursed claim except in cases of fraud or unintentional error. |
| 7 | p. 9 | New | Business Practices | Therapeutic Alternative Prescription Drug | Prohibits a PBM from requiring or demonstrating a preference for a pharmacy to dispense a therapeutically equivalent or therapeutically alternative drug that costs the covered person more out-of-pocket than the prescribed drug, unless the |
| 1 | p. 1 | New | Licensure | Disciplinary | Describes the manner in which a PBM's license may be disciplined. |

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| 13 | p. 12-13 | Existing | Licensure | K.S.A. 40-3823 | Amends requirement for a PBM to be registered to being licensed; application fee increases from \$140 to \$2,500. |
| 14 | p. 13 | Existing | Licensure | K.S.A. 40-3824 | Requirements regarding renewal of license, requires license for PBM to do business after October 1, 2020. |
| 3 | p. 2-6 | New | Transparency | Drug Rebates | (1) Requires that compensation remitted by or on behalf of a pharmaceutical manufacturer, developer or labeler to a carrier, or to a pharmacy benefits manager under contract with a carrier, related to its prescription drug benefits be used to lower costs, improve benefits or lower premiums; (2) requires quarterly reports to plan sponsors; (3) requires explanation of benefits reports to covered persons; and (4) requires an annual report to the commissioner. |
| 22 | p. 19 | Existing | Transparency | K.S.A. 65-16,125 | Pertains to the pharmacy audit integrity act (K.S.A. 65-16,121 through 65-16,126) Requires that a PBM provide a copy of the audit report to the plan sponsor, upon the plan sponsor's request. |
| 6 | p. 7-9 | New | Transparency | Pharmacy Ownership Interest | Requires that a PBM that has an ownership interest in a pharmacy must disclose any price differential between the amount paid to that pharmacy and the amount charged to the plan sponsor |
| 9 | p. 9-10 | New | Transparency | Preferred Network | Requires a PBM that uses a preferred network of pharmacies to disclose to a covered person the out-of-pocket costs at the specialty pharmacy and the covered person's out-of-pocket cost at a nonpreferred pharmacy identified by the covered |
| 8 | p. 9 | New | Transparency | Specialty Pharmacy | Requires a PBM that contracts with a specialty pharmacy to disclose to a covered person the out-of-pocket costs at the specialty pharmacy and the covered person's out-of-pocket cost at a retail pharmacy identified by the covered person as being an in-network provider for the prescription drug referenced by the covered person. |

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| 11 | p. 10-11 | Existing | Administration & Enforcement | K.S.A. 40-3821 | Citation of the act amended to "the pharmacy benefits manager licensure act." |
| 15 | p. 13-14 | Existing | Administration & Enforcement | K.S.A. 40-3825 | Grants the commissioner the authority to adopt rules and regulations to administer and enforce the act not later than July 1, 2022. |
| 16 | P. 14 | Existing | Administration & Enforcement | K.S.A. 40-3826 | Establishes a fine for a PBM doing business without a license. |
| 17 | p. 14 | Existing | Administration & Enforcement | K.S.A. 40-3827 | Renames the pharmacy benefits manager registration fund to the pharmacy benefits manager licensure fund. Adds missing language. |
| 2 | p. 1-2 | New | Administration & Enforcement | Enforcement | Describes the manner in which the commissioner may enforce the act. |
| 12 | p. 11-12 | Existing | Definitions | K.S.A. 40-3822 | Provides definitions for the pharmacy benefits manager licensure act. |
| 18 | p. 14-15 | Existing | Definitions | K.S.A. 40-3829 | Defines "maximum allowable cost." |