

SENATE BILL No. 236

By Committee on Public Health and Welfare

2-10

1 AN ACT concerning insurance; relating to pharmacy benefits managers;
2 the federal 340B drug pricing program; prohibiting disparate treatment
3 of pharmacies based upon participation in the 340B program; requiring
4 drug manufacturers to provide 340B pricing to pharmacies that enter
5 into contractual agreements covered under the 340B program;
6 prohibiting pharmacy benefits managers from denying patients the use
7 of the pharmacy and healthcare provider chosen by such patients.
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9 *Be it enacted by the Legislature of the State of Kansas:*

10 Section 1. (a) This section shall be known and may be cited as the
11 340B drug pricing nondiscrimination act.

12 (b) As used in this section:

13 (1) "340 drug pricing" means the federal 340B drug pricing program
14 authorized by 42 U.S.C. § 256b;

15 (2) "community pharmacy" means a pharmacy that is licensed and
16 located in the state of Kansas;

17 (3) "covered entity" means an entity that is participating in the federal
18 340B drug pricing program authorized by 42 U.S.C. § 256b, including
19 such entity's pharmacy or pharmacies, or any pharmacy or pharmacies
20 contracted for the purpose of dispensing drugs purchased through such
21 program;

22 (4) "hospital" includes a hospital as defined in K.S.A. 65-425, and
23 amendments thereto, and a rural emergency hospital as defined in K.S.A.
24 65-483, and amendments thereto;

25 (5) "patient" means an individual who has an established relationship
26 with a covered entity and is seeking medical diagnosis and treatment from
27 such covered entity;

28 (6) "pharmaceutical manufacturer" means the same as "manufacturer"
29 in K.S.A. 65-1626, and amendments thereto;

30 (7) "pharmacy" means the same as defined in K.S.A. 65-1626, and
31 amendments thereto;

32 (8) "pharmacy benefits manager" means the same as defined in
33 K.S.A. 40-3822, and amendments thereto;

34 (9) "provider" means an individual currently licensed by the board of
35 pharmacy to practice the profession of pharmacy in this state; and

36 (10) "third party" means a payor that reimburses a pharmacy for

1 drugs or services, including a pharmacy benefits manager. "Third party"
2 does not include the Kansas program of medical assistance under K.S.A.
3 39-709, and amendments thereto, or a managed care organization
4 providing state medicaid or children's health insurance program services
5 under the Kansas medical assistance or the state healthcare benefits
6 program.

7 (c) A third party shall:

8 (1) Inform a patient that such patient is not required to use a mail-
9 order pharmacy;

10 (2) obtain a signed waiver from a patient before allowing the use of a
11 mail-order pharmacy;

12 (3) make drug formulary and coverage decisions based on the third
13 party's normal course of business;

14 (4) allow a patient the freedom to use any pharmacy or any provider
15 the patient chooses, whether or not the pharmacy participates in 340B drug
16 pricing; and

17 (5) eliminate contracts with discriminatory terms, including terms
18 that:

19 (A) Transfer the benefits of 340B drug pricing savings from one
20 entity, including hospitals, federally qualified health centers or covered
21 entities and their underserved patients, to another entity, including
22 pharmacy benefits managers, private insurers and managed care
23 organizations;

24 (B) offer a lower reimbursement for a drug purchased under 340B
25 drug pricing than for the same drug not purchased under 340B drug
26 pricing;

27 (C) refuse to cover drugs purchased under 340B drug pricing;

28 (D) refuse to allow 340B drug pricing pharmacies to participate in
29 networks; and

30 (E) charge more than fair market value or seek profit sharing in
31 exchange for services involving 340B drug pricing.

32 (d) A third party shall not:

33 (1) Coerce a patient into or require a patient to use a mail-order
34 pharmacy;

35 (2) discriminate, lower the reimbursement for or impose any separate
36 terms upon a pharmacy in any other third party contract because a
37 pharmacy participates in 340B drug pricing;

38 (3) require a pharmacy to reverse, resubmit or clarify a 340B drug
39 pricing claim after the initial adjudication unless such actions are in the
40 normal course of pharmacy business and not related to 340B drug pricing;

41 (4) require a billing modifier to indicate that the drug or claim is a
42 340B drug pricing

43 claim unless the drug or claim is being billed as part of the medicaid

1 fee-for-service program;

2 (5) modify a patient's copayment on the basis of a pharmacy's
3 participation in 340B drug pricing;

4 (6) exclude a pharmacy from a network on the basis of the
5 pharmacy's participation in 340B drug pricing;

6 (7) establish or set network adequacy requirements based on 340B
7 drug pricing participation by a provider or a pharmacy; or

8 (8) prohibit a covered entity or a pharmacy under contract with a
9 covered entity from participating in the third party's provider network
10 because of such entity's participation in 340B drug pricing.

11 (e) A third party that is a pharmacy benefits manager shall not base
12 drug formulary or drug coverage decisions upon the 340B drug pricing
13 status of a drug, including price or availability, or whether a dispensing
14 pharmacy participates in 340B drug pricing.

15 (f) A pharmaceutical manufacturer shall not:

16 (1) Prohibit a pharmacy from contracting or participating with a
17 covered entity by denying access to drugs that are manufactured by the
18 pharmaceutical manufacturer; or

19 (2) deny or prohibit 340B drug pricing for a community pharmacy
20 that receives drugs purchased under a 340B drug pricing contract
21 pharmacy arrangement with a covered entity.

22 (f) All pharmacy claims processed by a pharmacy that participates in
23 340B drug pricing are final at the point of adjudication.

24 (g) The commissioner of insurance shall adopt rules and regulations
25 necessary to carry out the provisions of this section.

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