

SENATE BILL No. 521

By Committee on Assessment and Taxation

2-19

1 AN ACT concerning insurance; relating to pharmacy benefit managers;
2 imposing restrictions concerning the federal 340B drug pricing
3 program; enacting the defense of affordable prescriptions act to prohibit
4 certain discriminatory actions related to reimbursement of entities
5 participating in the 340B pricing program.
6

7 *Be it enacted by the Legislature of the State of Kansas:*

8 Section 1. (a) This section shall be known and may be cited as the
9 defense of affordable prescriptions act.

10 (b) As used in this section:

11 (1) "340B-covered entity" means an entity that is participating in the
12 federal 340B drug pricing program authorized by 42 U.S.C. § 256b,
13 including such entity's pharmacy or pharmacies, or any pharmacy or
14 pharmacies contracted for the purpose of dispensing drugs purchased
15 through such program;

16 (2) "340B drug" means a drug that has been subject to any offer for
17 reduced prices by a manufacturer pursuant to the federal 340B drug
18 pricing program authorized by 42 U.S.C. § 256b and is purchased by a
19 covered entity;

20 (3) "health insurer" means the same as defined in K.S.A. 40-4602,
21 and amendments thereto;

22 (4) "manufacturer" means the same as defined in K.S.A. 65-1626, and
23 amendments thereto;

24 (5) "pharmacy" means the same as defined in K.S.A. 65-1626, and
25 amendments thereto;

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

28 (7) "third-party payor" means a payor that reimburses a pharmacy for
29 drugs or services, including a pharmacy benefits manager. "Third party"
30 does not include the Kansas program of medical assistance under K.S.A.
31 39-709, and amendments thereto, or a managed care organization
32 providing state medicaid or children's health insurance program services
33 under the Kansas medical assistance or the state healthcare benefits
34 program.

35 (c) A health insurer, pharmacy benefits manager, third-party payor,
36 other third party payor or any agent thereof shall not:

- 1 (1) Reimburse a 340B-covered entity for 340B drugs at a lower
2 reimbursement rate than that paid for the same drug to an entity that is not
3 a 340B-covered entity;
- 4 (2) lower reimbursement for a claim on the basis that the claim is for
5 a 340B drug;
- 6 (3) impose terms or conditions on a 340B-covered entity that differ
7 from terms or conditions applied to an entity that is not a 340B-covered
8 entity on the basis that the 340B-covered entity participates in the 340B
9 drug pricing program authorized by 42 U.S.C. § 256b or that a drug is a
10 340B drug, including:
- 11 (A) Fees, charges, clawbacks or other adjustments or assessments
12 such as additional requirements, restrictions or unnecessary burdens upon
13 the 340B-covered entity that result in administrative costs or fees to such
14 entity that are not placed upon entities that do not participate in the 340B
15 drug pricing program, including affiliate pharmacies of the health insurer,
16 pharmacy benefits manager or other third-party payor;
- 17 (B) dispensing fees that are less than the dispensing fees for non-
18 340B entities;
- 19 (C) restrictions or requirements regarding participation in standard or
20 preferred pharmacy networks;
- 21 (D) requirements relating to the frequency or scope of audits of
22 inventory management systems;
- 23 (E) requirements that a claim for a drug shall include any
24 identification, billing modifier, attestation or other indication that a drug is
25 a 340B drug in order to be processed or resubmitted, unless it is required
26 by the United States centers for medicare and medicaid services or the
27 Kansas medical assistance program; or
- 28 (F) any other restrictions, conditions, practices or policies that are not
29 imposed on non-340B-covered entities;
- 30 (4) require a 340B-covered entity to reverse, resubmit or clarify a
31 claim after the initial adjudication, unless such actions are in the normal
32 course of pharmacy business and not related to 340B drug pricing;
- 33 (5) (A) discriminate against a 340B-covered entity in a manner that
34 prevents or interferes with any patient's choice to receive such drugs from
35 the 340B-covered entity, including the administration of such drugs.
- 36 (B) For purposes of this subsection, it is considered a discriminatory
37 practice that prevents or interferes with a patient's choice to receive drugs
38 at a 340B-covered entity if a health insurance issuer, pharmacy benefit
39 manager or other third-party payor places any additional requirements,
40 restrictions or unnecessary burden upon the 340B entity that results in
41 administrative costs or fees to the 340B entity, including, but not limited to,
42 requiring a claim for a drug to include any identification, billing
43 modifier, attestation or other indication that a drug is a 340B drug in order

1 to be processed or resubmitted, unless it is required by the United States
2 center for medicare and medicaid services or the Kansas medical
3 assistance program;

4 (6) include any other provision in a contract between a health insurer,
5 pharmacy benefits manager or other third-party payor and a 340B-covered
6 entity that discriminates against the 340B-covered entity or prevents or
7 interferes with an individual's choice to receive a prescription drug from a
8 340B-covered entity, including the administration of the drug, creation of a
9 restriction or imposition of an additional charge to a patient who chooses
10 to receive drugs from a 340B-covered entity;

11 (7) require or compel the submission of ingredient costs or pricing
12 data pertaining to 340B drugs to any health insurer, pharmacy benefits
13 manager or other third-party payor; and

14 (8) exclude any 340B-covered entity from the health insurer,
15 pharmacy benefits manager or other third-party payor network on the basis
16 that the 340B-covered entity participates in the 340B drug pricing program
17 authorized by 42 U.S.C. § 256b or refuse to contract with a 340B-covered
18 entity for reasons other than those that apply equally to non-340B entities.

19 (d) A manufacturer shall not:

20 (1) Deny, restrict, prohibit or otherwise interfere with the acquisition
21 of a 340B drug by or delivery of a 340B drug to a pharmacy that is under
22 contract with a 340B-covered entity and is authorized under such contract
23 to receive and dispense 340B drugs on behalf of the 340B covered entity,
24 unless such receipt is prohibited by the United States department of health
25 and human services; or

26 (2) interfere with a pharmacy contracted with a 340B-covered entity.

27 (e) Any violation of this act shall be a violation of the Kansas
28 consumer protection act and shall be subject to any and all of the
29 enforcement provisions of the Kansas consumer protection act.

30 (f) Nothing in this act shall be construed to:

31 (1) Be less restrictive than federal law for a person or entity regulated
32 by this act;

33 (2) conflict with applicable federal law or regulation; or

34 (3) conflict with limited distribution of a drug required under 21
35 U.S.C. § 355-1.

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