

SENATE BILL No. 103

By Committee on Financial Institutions and Insurance

1-28

1 AN ACT concerning pharmacy benefits managers; amending K.S.A. 2014
2 Supp. 40-3822 and repealing the existing section.

3
4 *Be it enacted by the Legislature of the State of Kansas:*

5 New Section 1. As used in this act:

6 (a) "Covered individual" means an individual receiving prescription
7 medication coverage or reimbursement provided by a health insurance
8 policy, government program or pharmacy benefits manager;

9 (b) "list" means the list of drugs for which maximum allowable costs
10 have been established;

11 (c) "maximum allowable cost" means the maximum amount that a
12 pharmacy benefits manager will reimburse a pharmacy for the cost of a
13 drug;

14 (d) "multiple source drug" means a therapeutically equivalent drug
15 that is available from at least three manufacturers;

16 (e) "network pharmacy" means a pharmacy registered under K.S.A.
17 65-1643 or 65-1657, and amendments thereto, that contracts with a
18 pharmacy benefits manager;

19 (f) "pharmacy benefits manager" means an entity that contracts with
20 third-party pharmacies on behalf of a health plan, as defined in 45 C.F.R. §
21 160.103, as in effect on July 1, 2015, for the third-party pharmacy to
22 provide pharmacy services to such health plans. Such an entity determines
23 reimbursement to pharmacies for the pharmacy services provided.

24 (g) "retail community pharmacy" means a pharmacy that is open to
25 the public, serves walk-in customers and makes available face-to-face
26 consultation between licensed pharmacists and persons to whom
27 medications are dispensed; and

28 (h) "therapeutically equivalent" means drugs that are approved by the
29 United States food and drug administration for interstate distribution and
30 the food and drug administration has determined that the drugs will
31 provide essentially the same efficacy and toxicity when administered to an
32 individual in the same dosage regimen.

33 New Sec. 2. (a) A pharmacy benefits manager:

34 (1) May not place a drug on a list unless there are at least three
35 therapeutically equivalent, multiple source drugs or at least one generic
36 drug available from only one manufacturer, available for purchase, and not

1 obsolete or temporarily unavailable, by network pharmacies from national
2 or regional wholesalers;

3 (2) shall ensure that all drugs on a list are generally available for
4 purchase by pharmacies in this state from national or regional wholesalers;

5 (3) shall ensure that all drugs on a list are not obsolete;

6 (4) shall make available to each network pharmacy at the beginning
7 of the term of a contract, and upon renewal of the contract, the nationally
8 recognized comprehensive data sources utilized to determine the
9 maximum allowable cost of the pharmacy benefits manager;

10 (5) shall make a list available to a network pharmacy upon request in
11 a format that is readily accessible to and usable by the network pharmacy;

12 (6) shall update each list maintained by the pharmacy benefits
13 manager every seven business days and make the updated lists, including
14 all changes in the price of drugs, available to network pharmacies in a
15 readily accessible and usable format;

16 (7) shall ensure that dispensing fees are not included in the
17 calculation of maximum allowable cost.

18 (b) A pharmacy benefits manager shall establish a process by which a
19 network pharmacy may appeal its reimbursement for a drug subject to
20 maximum allowable cost. A network pharmacy may appeal a maximum
21 allowable cost if the reimbursement for the drug is less than the net
22 amount that the network pharmacy paid to the supplier of the drug. An
23 appeal requested under this section must be completed within 30 calendar
24 days of the pharmacy making the claim for which appeal has been
25 requested.

26 (c) A pharmacy benefits manager shall provide as part of the appeals
27 process established under subsection (b):

28 (1) A telephone number at which a network pharmacy may contact
29 the pharmacy benefits manager and speak with an individual who is
30 responsible for processing appeals;

31 (2) a final response to an appeal of a maximum allowable cost within
32 seven business days; and

33 (3) if the appeal is denied, the reason for the denial and the national
34 drug code of a drug that may be purchased by similarly situated
35 pharmacies at a price that is equal to or less than the maximum allowable
36 cost.

37 (d) If an appeal is upheld under this section, the pharmacy benefits
38 manager shall make an adjustment on the date that the pharmacy benefits
39 manager makes the determination. The pharmacy benefits manager shall
40 make the adjustment effective for all similarly situated pharmacies in this
41 state that are within the network.

42 New Sec. 3. (a) In the event any pharmacy benefits manager fails to
43 comply with any requirement imposed pursuant to this act, the

1 commissioner may suspend or revoke such pharmacy benefit manager's
2 certificate of registration required under the pharmacy benefits manager
3 registration act to transact business in this state or the commissioner may
4 refuse to renew such company's certificate of authority.

5 (b) Any pharmacy benefits manager who violates any provision of
6 this act shall incur, in addition to any other penalty provided by law, a civil
7 penalty in an amount of up to \$5,000 for every such violation and, in the
8 case of a continuing violation, every day such violation continues shall be
9 deemed a separate violation.

10 (c) The commissioner of insurance, upon a finding that a pharmacy
11 benefits manager has violated the provisions of this act, may impose a
12 penalty within the limits provided in this section, which penalty shall
13 constitute an actual and substantial economic deterrent to the violation for
14 which it is assessed.

15 Sec. 4. K.S.A. 2014 Supp. 40-3822 is hereby amended to read as
16 follows: 40-3822. For purposes of this act: (a) "Commissioner" means the
17 commissioner of insurance as defined by K.S.A. 40-102, and amendments
18 thereto.

19 (b) (1) "Covered entity" means:

20 (A) A nonprofit hospital or medical service corporation, health
21 insurer, health benefit plan or health maintenance organization;

22 (B) a health program administered by a department or the state in the
23 capacity of provider of health coverage; or

24 (C) an employer, labor union or other group of persons organized in
25 the state that provides health coverage to covered individuals who are
26 employed or reside in the state.

27 (2) Covered entity shall not include any:

28 (A) Self-funded plan that is exempt from state regulation pursuant to
29 ERISA;

30 (B) plan issued for coverage for federal employees; or

31 (C) health plan that provides coverage only for accidental injury,
32 specified disease, hospital indemnity, medicare supplement, disability
33 income, long-term care or other limited benefit health insurance policies
34 and contracts.

35 (c) "Covered person" means a member, policyholder, subscriber,
36 enrollee, beneficiary, dependent or other individual participating in a
37 health benefit plan.

38 (d) "Pharmacy benefits management" means:

39 (1) Any of the following services provided with regard to the
40 administration of the following pharmacy benefits:

41 (A) Mail service pharmacy;

42 (B) claims processing, retail network management and payment of
43 claims to pharmacies for prescription drugs dispensed to covered

1 individuals;

2 (C) clinical formulary development and management services;

3 (D) rebate contracting and administration;

4 (E) certain patient compliance, therapeutic intervention and generic
5 substitution programs; or

6 (F) disease management programs involving prescription drug
7 utilization; and

8 (2) (A) the procurement of prescription drugs by a prescription
9 benefits manager at a negotiated rate for dispensation to covered
10 individuals within this state; or

11 (B) the administration or management of prescription drug benefits
12 provided by a covered insurance entity for the benefit of covered
13 individuals.

14 (e) ~~"Pharmacy benefits manager" means a person, business or other~~
15 ~~entity that performs pharmacy benefits management. Pharmacy benefits~~
16 ~~manager includes any person or entity acting in a contractual or~~
17 ~~employment relationship for a pharmacy benefits manager in the~~
18 ~~performance of pharmacy benefits management for a covered entity an~~
19 ~~entity that contracts with third-party pharmacies on behalf of a health~~
20 ~~plan, as defined in 45 C.F.R. § 160.103, as in effect on July 1, 2015, for~~
21 ~~the third-party pharmacy to provide pharmacy services to such health~~
22 ~~plans. Such an entity determines reimbursement to pharmacies for the~~
23 ~~pharmacy services provided.~~

24 The term "pharmacy benefits manager" shall not include a covered
25 insurance entity.

26 (f) "Person" means an individual, partnership, corporation,
27 organization or other business entity.

28 Sec. 5. K.S.A. 2014 Supp. 40-3822 is hereby repealed.

29 Sec. 6. This act shall take effect and be in force from and after its
30 publication in the statute book.