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

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

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

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

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

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

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

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

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

(i) Mail service pharmacy;

(ii) claims processing, retail network management and payment of
claims to pharmacies for prescription drugs dispensed to covered
individuals;
(iii) clinical formulary development and management services;
(iv) certain patient compliance, therapeutic intervention and generic
substitution programs;
(v) disease management programs; or
(vi) rebate contracting and administration; and
(7) "pharmacy benefits manager" means a publicly traded or privately
held entity that performs pharmacy benefits management, acts in the best
interest of the covered entity as it relates to pharmacy benefits
management services and treats the covered entity in a fiduciary manner.
The term includes a person or entity acting for a pharmacy benefits
manager in a contractual or employment relationship in the performance of
pharmacy benefits management for the covered entity and includes mail
order and specialty pharmacies.
(b) Each pharmacy benefits manager owes a fiduciary duty to the
covered entity and shall discharge such duty in accordance with the
provisions of state and federal law. A pharmacy benefits manager shall act
in the best interest of the covered entity at all times while carrying out its
duties and obligations.
(c) Each pharmacy benefits manager shall perform its duties with
care, skill, prudence and diligence and in accordance with the standards of
conduct applicable to a fiduciary in an enterprise of like character and with
like aims.
(d) Each pharmacy benefits manager shall discharge its duties with
respect to the covered entity for the primary purpose of providing benefits
to covered individuals and defraying the reasonable expenses of
administering the health plan.
(e) The pharmacy benefits manager shall not have any conflict of
interest, such as direct or indirect ownership of pharmacy providers. Each
pharmacy benefits manager shall notify the covered entity in writing of
any activity, policy or practice of the pharmacy benefits manager that
directly or indirectly presents any conflict of interest with the duties
imposed by this section.
(f) Each pharmacy benefits manager shall provide to the covered
entity all financial and utilization information requested by the covered
entity relating to the providing of benefits to covered individuals through
such covered entity and all financial and utilization information relating to
services to such covered entity. A pharmacy benefits manager providing
information under this subsection may designate that material as
confidential. The pharmacy benefits manager shall agree to disclose all
confidential information to the covered entity as a requirement of any
agreement between the covered entity and the pharmacy benefits manager.
The covered entity, upon receiving confidential information from the
pharmacy benefits manager, shall review such confidential information and determine if such confidential information restricts the covered entity from performing any of its duties pursuant to K.S.A. 75-6501 et seq., and amendments thereto. Information designated as confidential information by a pharmacy benefits manager and provided to a covered entity under this subsection shall not be disclosed by the covered entity to any person without the consent of the pharmacy benefits manager. Disclosure, however, may be ordered by a court of this state for good cause shown or made in a court filing under seal, unless or until otherwise ordered by the court. The attorney general may investigate potential violations of this subsection and may demand disclosure of information, but shall hold any proprietary information confidential. Information designated as confidential information under this subsection shall not be subject to disclosure under the Kansas open records act, K.S.A. 45-221 et seq., and amendments thereto. The provisions of this subsection shall not be subject to the provisions of K.S.A. 45-229(b), and amendments thereto.

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

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

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

(j) Each pharmacy benefits manager shall disclose to the covered entity all financial terms and arrangements for remuneration of any kind that apply between the pharmacy benefits manager and any prescription drug manufacturer or labeler, including, but not limited to, formulary management and drug switching programs, educational support, claims processing and pharmacy network fees that are charged from the retail pharmacies and data sales fees. Any pharmacy benefits manager providing information under this subsection may designate that material as confidential. The pharmacy benefits manager shall agree to disclose all
confidential information to the covered entity as a requirement of any agreement between the covered entity and the pharmacy benefits manager. The covered entity, upon receiving confidential information from the pharmacy benefits manager, shall review such confidential information and determine if such confidential information restricts the covered entity from performing any of its duties pursuant to K.S.A. 75-6501 et seq., and amendments thereto. Information designated as confidential information under this subsection shall not be disclosed by the covered entity to any person without the consent of the pharmacy benefits manager. Disclosure, however, may be ordered by a court of this state for good cause shown or made in a court filing under seal unless or until otherwise ordered by the court. The attorney general may investigate potential violations of this subsection and may demand disclosure of information, but shall hold any proprietary information confidential. Information designated as confidential information under this subsection shall not be subject to disclosure under the Kansas open records act, K.S.A. 45-221 et seq., and amendments thereto. The provisions of this subsection shall not be subject to the provisions of K.S.A. 45-229(b), and amendments thereto.

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

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

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

(n) Whenever the division of health care finance of the department of health and environment issues a request for proposals concerning the pharmacy benefits management contract for the state health care benefits program, such request for proposals shall include the following provisions:
The pharmacy benefits manager may be either a publicly traded or privately owned entity;
the pharmacy benefits manager shall abide by a fiduciary duty;
and
the pharmacy benefits manager shall be able to accommodate at any time a plan sponsor at 110% of the size of the covered entity's contract while such contract is in operation.

This section shall be known and may be cited as the Rx transparency act.

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