

House Substitute for SENATE BILL No. 28

By Committee on Insurance and Pensions

3-15

1 AN ACT concerning insurance; relating to the regulation of pharmacy
2 benefits managers; requiring licensure rather than registration of such
3 entities; enacting the pharmacy benefits manager licensure act;
4 amending K.S.A. 40-3821, 40-3822, 40-3823, 40-3824, 40-3825, 40-
5 3826, 40-3827, 40-3829 and 40-3830 and repealing the existing
6 sections.

7

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

9 New Section 1. (a) A pharmacy benefits manager's license may be
10 revoked, suspended or limited, the licensee may be censured or placed
11 under probationary conditions or an application for a license or for
12 reinstatement of a license may be denied upon a finding that the:

13 (1) Applicant or licensee committed fraud or misrepresentation in
14 applying for or securing an original, renewal or reinstated license;

15 (2) licensee has violated any lawful rule or regulation promulgated by
16 the commissioner or violated any lawful order or directive of the
17 commissioner previously entered by the commissioner;

18 (3) pharmacy benefits manager has engaged in fraudulent activity that
19 constitutes a violation of state or federal law;

20 (4) licensee has failed to furnish any information legally requested by
21 the commissioner to the commissioner or the commissioner's investigators
22 or representatives;

23 (5) pharmacy benefits manager has been determined by the
24 commissioner to be in violation of or noncompliance with state or federal
25 law; or

26 (6) pharmacy benefits manager has failed to timely submit a renewal
27 application and the information required under K.S.A. 40-3824, and
28 amendments thereto. In lieu of a denial of a renewal application, the
29 commissioner may permit the pharmacy benefits manager to submit to the
30 commissioner a corrective action plan to correct or cure any deficiencies.

31 (b) This section shall be a part of and supplemental to the pharmacy
32 benefits manager licensure act.

33 Sec. 2. K.S.A. 40-3821 is hereby amended to read as follows: 40-
34 3821. (a) K.S.A. 40-3821 through 40-3828, and amendments thereto, *and*
35 *section 1, and amendments thereto*, shall be known and may be cited as the
36 pharmacy benefits manager ~~registration~~ *licensure* act.

1 (b) *On and after January 1, 2023, a person shall not perform, act or*
2 *do business in this state as a pharmacy benefits manager unless such*
3 *person has a valid license issued by the commissioner pursuant to this*
4 *act.*

5 (c) This act shall apply to any pharmacy benefits manager that
6 provides claims processing services, other prescription drug or device
7 services, or both, to covered persons who are residents of this state.

8 ~~(e)~~ (d) This act shall not apply to any pharmacy benefits manager that
9 holds a certificate of registration as an administrator pursuant to K.S.A.
10 40-3810, and amendments thereto.

11 (e) *A license issued in accordance with the pharmacy benefits*
12 *manager licensure act shall be nontransferable.*

13 Sec. 3. K.S.A. 40-3822 is hereby amended to read as follows: 40-
14 3822. ~~For purposes of~~ *As used in this act:*

15 (a) *"Act" means the pharmacy benefits manager licensure act.*

16 (b) "Commissioner" means the commissioner of insurance as defined
17 by K.S.A. 40-102, and amendments thereto.

18 ~~(b)~~(c) (1) "Covered entity" means:

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

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

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

26 (2) "Covered entity ~~shall~~" does not include any:

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

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

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

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

37 ~~(d)~~(e) "Department" means the insurance department.

38 (f) "ERISA" means the federal employee retirement income security
39 act of 1974.

40 (g) "Health benefit plan" means the same as defined in K.S.A. 40-
41 4602, and amendments thereto.

42 (h) "Health insurer" means the same as defined in K.S.A. 40-4602,
43 and amendments thereto.

1 (i) "Maximum allowable cost" or "MAC" means any term or
2 methodology that a pharmacy benefits manager or a healthcare insurer
3 may use to establish the maximum amount that a pharmacy benefits
4 manager will reimburse a pharmacy or a pharmacist for generic drugs.

5 (j) "Pharmacy benefits management" means:

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

8 (A) Mail service pharmacy;

9 (B) claims processing, retail network management and payment of
10 claims to pharmacies for prescription drugs dispensed to covered
11 individuals;

12 (C) clinical formulary development and management services;

13 (D) rebate contracting and administration;

14 (E) certain patient compliance, therapeutic intervention and generic
15 substitution programs; or

16 (F) disease management programs involving prescription drug
17 utilization; and

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

21 (B) the administration or management of prescription drug benefits
22 provided by a covered insurance entity for the benefit of covered
23 individuals.

24 (e)(k) "Pharmacy benefits manager" means a person, business or
25 other entity that performs pharmacy benefits management. "Pharmacy
26 benefits manager" includes any person or entity acting in a contractual or
27 employment relationship for a pharmacy benefits manager in the
28 performance of pharmacy benefits management for a covered entity. ~~The~~
29 ~~term~~ "Pharmacy benefits manager" ~~shall~~ does not include a covered
30 insurance entity.

31 (f)(l) "Person" means an individual, partnership, corporation,
32 organization or other business entity.

33 Sec. 4. K.S.A. 40-3823 is hereby amended to read as follows: 40-
34 3823. ~~Registration requirement to act as a pharmacy benefits manager.~~

35 (a) No person shall act or operate as a pharmacy benefits manager
36 without first obtaining a valid ~~certificate of registration~~ license issued by
37 the commissioner.

38 (b) Each person seeking a ~~certificate of registration~~ license to act as a
39 pharmacy benefits manager shall file with the commissioner an application
40 for a ~~certificate of registration~~ license upon a form to be furnished by the
41 commissioner. *At a minimum*, the application form shall include *the*
42 *following information*:

43 (1) *The name, address and telephone number of the pharmacy*

1 *benefits manager.*

2 (2) The name, address, official position and professional
3 qualifications of each individual who is responsible for the conduct of the
4 affairs of the pharmacy benefits manager, including all members of the
5 board of directors, board of trustees, executive committee, other governing
6 board or committee, the principal officers in the case of a corporation, the
7 partners or members in the case of a partnership or association ~~and any~~
8 ~~other person who exercises control or influence over the affairs of the~~
9 ~~pharmacy benefits manager.~~

10 ~~(2)(3)~~ (3) The name and address of the applicant's agent for service of
11 process in the state.

12 (4) *The name, address, phone number, email address and official*
13 *position of the employee who will serve as the primary contact for the*
14 *department.*

15 (5) *A copy of the pharmacy benefits manager's corporate charter,*
16 *articles of incorporation or other charter document.*

17 (6) *A template contract, which shall include a dispute resolution*
18 *process, that ultimately involves an independent fact finder between:*

19 (A) *The pharmacy benefits manager and the health insurer; or*

20 (B) *the pharmacy benefits manager and the pharmacy or a*
21 *pharmacy's contracting agent.*

22 (7) *A network adequacy report on a form prescribed by the*
23 *department through rules and regulations.*

24 ~~(3)(c)~~ (c) A nonrefundable application fee of ~~\$140~~ \$2,500.

25 (d) *The licensee shall inform the commissioner, by any means*
26 *acceptable to the commissioner, of any material change in the information*
27 *required by this subsection within 90 days of such change. Failure to*
28 *timely inform the commissioner of a material change may result in a*
29 *penalty against the licensee in the amount of \$500.*

30 (e) *Within 90 days after receipt of a completed application, the*
31 *network adequacy report and the applicable license fee, the commissioner*
32 *shall review the application and issue a license if the applicant is deemed*
33 *qualified under this section. If the commissioner determines that the*
34 *applicant is not qualified, the commissioner shall notify the applicant and*
35 *shall specify the reason for the denial.*

36 (f) (1) *All documents, materials or other information and copies*
37 *thereof in the possession or control of the department or any other*
38 *governmental entity that are obtained by or disclosed to the commissioner*
39 *or any other person in the course of an application, examination or*
40 *investigation made pursuant to this act shall be confidential by law and*
41 *privileged, shall not be subject to any open records, freedom of*
42 *information, sunshine or other public record disclosure laws, and shall not*
43 *be subject to subpoena or discovery.*

1 (2) *The provisions of paragraph (1) shall only apply to the disclosure*
2 *of the confidential documents described in paragraph (1) by the*
3 *department or any other governmental entity and shall not be construed to*
4 *create any privilege in favor of any other party.*

5 (3) *The provisions of this subsection shall expire on July 1, 2027,*
6 *unless the legislature reviews and reenacts this provision pursuant to*
7 *K.S.A. 45-229, and amendments thereto, prior to July 1, 2027.*

8 Sec. 5. K.S.A. 40-3824 is hereby amended to read as follows: 40-
9 3824. (a) Each pharmacy benefits manager ~~registration~~ license shall expire
10 on March 31 each year and may be renewed annually on the request of the
11 ~~registrant~~ licensee. The application for renewal shall be submitted on a
12 form furnished by the commissioner and accompanied by a renewal fee of
13 ~~\$140~~ \$2,500. The application for renewal shall be in such form and contain
14 such matters as the commissioner prescribes.

15 (b) If a ~~registration~~ license renewal fee is not paid by the prescribed
16 date, the amount of the fee, plus a penalty fee of ~~\$140~~ \$2,500 shall be paid.
17 The pharmacy benefits ~~manager registration~~ manager's license may be
18 revoked or suspended by the commissioner until the renewal fee and any
19 penalty assessed has been paid.

20 (c) Any person who performs or is performing any pharmacy benefits
21 management service ~~on the effective date of this act must obtain a~~
22 ~~certificate of registration shall be required to obtain a license as a~~
23 ~~pharmacy benefits manager from the commissioner within 90 days after~~
24 ~~the effective date of this act not later than January 1, 2023,~~ in order to
25 continue to do business in Kansas.

26 Sec. 6. K.S.A. 40-3825 is hereby amended to read as follows: 40-
27 3825. (a) In accordance with the provisions of the rules and regulations
28 filing act, K.S.A. 77-415 et seq., and amendments thereto, the
29 commissioner may adopt, amend and revoke rules and regulations
30 governing the administration and enforcement of this act, ~~including, but~~
31 ~~not~~ limited to:

32 ~~(a)~~(1) The content of the application form;

33 ~~(b)~~(2) the content of any other form or report required to implement
34 this act; and

35 ~~(c)~~(3) such other rules and regulations as the commissioner may deem
36 necessary to carry out the provisions of this act.

37 (b) *The commissioner shall adopt, amend and revoke all such*
38 *necessary rules and regulations not later than July 1, 2023.*

39 Sec. 7. K.S.A. 40-3826 is hereby amended to read as follows: 40-
40 3826. (a) *If the commissioner has reason to believe that a pharmacy*
41 *benefits manager has been engaged in this state or is engaging in this*
42 *state in activity that violates the pharmacy benefits manager licensure act,*
43 *the commissioner shall issue and serve upon such pharmacy benefits*

1 manager a statement of the charges of any such violation and conduct a
2 hearing thereon in accordance with the provisions of the Kansas
3 administrative procedure act.

4 (b) If, after such a hearing, the commissioner determines that the
5 pharmacy benefits manager charged has violated the act, the
6 commissioner may, in the exercise of discretion, order any one or more of
7 the following:

8 (1) (A) Payment of a monetary penalty of not more than \$1,000 for
9 each and every act or violation. The total of the monetary penalties for
10 such violations shall not exceed \$10,000;

11 (B) if the pharmacy benefits manager knew or reasonably should
12 have known that such manager was in violation of this act, payment of a
13 monetary penalty of not more than \$5,000 for each and every act or
14 violation. The total of the monetary penalties for such violations shall not
15 exceed \$50,000 in any six-month period;

16 (2) if such manager knew or reasonably should have known such
17 person was in violation of this act, the suspension or revocation of the
18 pharmacy benefits manager's license; or

19 (3) the assessment of any costs incurred as a result of conducting the
20 administrative hearing authorized by the provisions of this section against
21 the pharmacy benefits manager.

22 (c) As used in this section, "costs" includes witness fees, mileage
23 allowances, any costs associated with reproduction of documents that
24 become a part of the hearing record and expenses of making a record of
25 the hearing.

26 (d) (1) If the deadline for filing a petition for review has expired and
27 no such petition has been filed, the commissioner may reopen and modify
28 or set aside any portion or the entirety of any administrative order issued
29 under this section.

30 (2) The reopening of any such order may occur if, in the
31 commissioner's opinion, the conditions of fact or law have changed to
32 warrant such an action or if such an action is warranted in the public
33 interest.

34 (e) Any person who acts as a pharmacy benefits manager without
35 being registered licensed as required by this act shall be subject to a fine of
36 ~~\$500 for each~~ \$5,000 for the period in which the pharmacy benefits
37 manager is found to be in violation.

38 Sec. 8. K.S.A. 40-3827 is hereby amended to read as follows: 40-
39 3827. (a) There is hereby established in the state treasury the pharmacy
40 benefits manager licensure fund. Such fund shall be administered by the
41 commissioner for costs related to administering the pharmacy benefits
42 manager licensing act. All expenditures from the pharmacy benefits
43 manager licensure fund shall be made in accordance with appropriation

1 *acts upon warrants of the director of accounts and reports issued pursuant*
2 *to vouchers approved by the commissioner or by the commissioner's*
3 *designee.*

4 (b) The commissioner shall remit all moneys received by or for the
5 commissioner under the provisions of this act to the state treasurer ~~at least~~
6 ~~monthly~~ *in accordance with the provisions of K.S.A. 75-4215, and*
7 *amendments thereto.* Upon receipt of each such remittance, the state
8 treasurer shall deposit the entire amount thereof in the state treasury and
9 such amount shall be credited to the pharmacy benefits manager
10 ~~registration licensure~~ fund.

11 Sec. 9. K.S.A. 40-3829 is hereby amended to read as follows: 40-
12 3829. As used in ~~this act~~ *K.S.A. 40-3829 and 40-3830, and amendments*
13 *thereto:*

14 (a) "List" means the list of drugs for which maximum allowable costs
15 have been established;

16 (b) "maximum allowable cost" or "MAC" means the ~~maximum~~
17 ~~amount that a pharmacy benefits manager will reimburse a pharmacy for~~
18 ~~the cost of a generic drug same as defined in K.S.A. 40-3822, and~~
19 ~~amendments thereto;~~

20 (c) "network pharmacy" means a pharmacy that contracts with a
21 pharmacy benefits manager; ~~and~~

22 (d) "pharmacy benefits manager" or "PBM" ~~shall have the same~~
23 ~~meaning as means the same as defined in K.S.A. 40-3822(e), and~~
24 ~~amendments thereto;~~

25 (e) *"pharmacy benefits plan or pharmacy benefits program" means a*
26 *plan or program that pays for, reimburses, covers the cost of or otherwise*
27 *provides for pharmacist services to individuals who reside in or are*
28 *employed in this state; and*

29 (f) *"wholesaler" means a person or entity that sells and distributes*
30 *prescription pharmaceutical products, including, but not limited to, a full*
31 *line of brand name, generic and over-the-counter pharmaceuticals and*
32 *that offers regular and private delivery to a pharmacy.*

33 Sec. 10. K.S.A. 40-3830 is hereby amended to read as follows: 40-
34 3830. A pharmacy benefits manager, *including the pharmacy benefits*
35 *manager for the state healthcare benefits program, shall:*

36 (a) ~~Shall~~ Not place a drug on a MAC list unless there are at least two
37 therapeutically equivalent multi-source generic drugs, or at least one
38 generic drug available from at least one manufacturer, generally available
39 for purchase by network pharmacies from national or regional wholesalers
40 and the *national drug code for the drug is not obsolete;*

41 (b) ~~Shall~~ provide to each network pharmacy at the beginning of the
42 term of a contract and upon request thereafter, the sources utilized to
43 determine the maximum allowable cost price;

1 (c) ~~Shall~~ provide a process for each network pharmacy provider to
2 readily access the maximum allowable price specific to that provider.;

3 (d) ~~Shall~~ review and update each applicable maximum allowable cost
4 list every seven business days and apply the updates to reimbursements ~~no~~
5 *not* later than one business day.;

6 (e) ~~Shall~~ ensure that dispensing fees are not included in the
7 calculation of maximum allowable cost.;

8 (f) ~~Shall~~ establish a ~~process by which a network pharmacy may~~
9 ~~appeal reimbursement for a drug subject to maximum allowable cost as~~
10 ~~follows~~ *reasonable administrative appeal procedure to allow a pharmacy*
11 *or pharmacy's contracting agent to challenge MAC for a specific drug as:*

12 (1) *Not meeting the requirements of this section;*

13 (2) *being below the cost at which the pharmacy may obtain the drug;*

14 (g) *include in any administrative appeals procedure the following:*

15 (1) *A dedicated telephone number and email address or website for*
16 *the purpose of submitting administrative appeals; and*

17 (2) *the ability to submit an administrative appeal directly to the*
18 *pharmacy benefits manager regarding the pharmacy benefits plan or*
19 *program or through a pharmacy service administrative organization;*

20 ~~The~~(h) *permit a network pharmacy ~~must~~ or a network pharmacy's*
21 *contracting agent to file an administrative appeal ~~no~~ not later than 10*
22 *business days after the fill date.;*

23 (i) *require that the pharmacy benefits manager only request the*
24 *following information to determine a MAC administrative appeal:*

25 (1) *The prescription number;*

26 (2) *the provider's name;*

27 (3) *the national drug code used during the filing of the claim;*

28 (4) *the date of the fill;*

29 (5) *the reimbursement amount; and*

30 (6) *such other information related to the appealed claim as required*
31 *by contract; and*

32 ~~(2)~~(j) (1) ~~The PBM shall~~ provide a response to the appealing network
33 pharmacy ~~no~~ not later than 10 business days after receiving an appeal
34 request containing information sufficient for the ~~PBM~~ *pharmacy benefits*
35 *manager to process the appeal as specified by the contract.*

36 ~~(3)~~(2) If the appeal is upheld, the ~~PBM~~ *pharmacy benefits manager:*

37 (A) *Shall make the adjustment in the drug price effective ~~no~~ not later*
38 *than one business day after the appeal is resolved;*

39 (B) *shall make the adjustment applicable to all similarly situated*
40 *network pharmacy providers, as determined by the plan sponsor or*
41 *pharmacy benefits manager, as appropriate; and*

42 (C) *permit the appealing pharmacy to reverse and rebill the appealed*
43 *claim.*

1 ~~(4)~~(3) If the appeal is denied, the ~~PBM~~ *pharmacy benefits manager*
2 shall provide the appealing pharmacy the *reason for the denial and the*
3 *national drug code number* from a national or regional wholesaler
4 operating in Kansas where the drug is generally available for purchase at a
5 price equal to or less than the maximum allowable cost, and when
6 applicable, may be substituted lawfully.

7 Sec. 11. K.S.A. 40-3821, 40-3822, 40-3823, 40-3824, 40-3825, 40-
8 3826, 40-3827, 40-3829 and 40-3830 are hereby repealed.

9 Sec. 12. This act shall take effect and be in force from and after its
10 publication in the statute book.