

February 20, 2020

The Honorable Robert Olson, Chairperson
Senate Committee on Financial Institutions and Insurance
Statehouse, Room 236-E
Topeka, Kansas 66612

Dear Senator Olson:

SUBJECT: Fiscal Note for SB 438 by Senate Committee on Financial Institutions and Insurance

In accordance with KSA 75-3715a, the following fiscal note concerning SB 438 is respectfully submitted to your committee.

SB 438 would provide instances when a pharmacy benefits manager's (PBM) license could be revoked, suspended, or placed on probation and when an application for a license or reinstatement of a license could be denied. The Insurance Commissioner would adopt, amend, or revoke rules and regulations to issue, regulate, and take action against a PBM no later than July 1, 2022.

SB 438 would require the PBM to prepare a quarterly transparency report summarizing data relating to prescription drug benefits for the previous quarter. The report would be submitted to covered entities or plan sponsors before the end of the calendar quarter. SB 438 would also require the PBM to provide each covered person with a full explanation of benefits for all claims processed during the previous month. SB 438 would require the PBM to submit a transparency report containing data from the prior calendar year to the Commissioner each year starting July 1, 2021. The Commissioner would publish the reports on the agency website. A PBM would be required to provide all adequate and accessible retail pharmacy network for prescription drugs. Retail pharmacies would be required to follow certain standards that are outlined in the bill. A PBM would be required to submit an annual pharmacy network adequacy report to the Commissioner. The Commissioner could approve a waiver from a PBM to waive the adequacy report requirement for one year if certain criteria are provided in the waiver.

A person would be required to have a valid license from the Commissioner to do business as a PBM and the license would not be transferrable. The bill would increase the application, renewal, and renewal penalty fees from \$140 to \$2,500. SB 438 also would increase the fine for a person acting as a PBM when they do not have a valid PBM license from \$500 for each violation to \$5,000 for the period in which the PBM is found in violation. If a PBM is found to be non-compliant with any state or federal law, then the PBM would be fined \$5,000 per violation and \$5,000 per occurrence of non-compliance. The bill also reduces the days the PBM would have to respond to a network pharmacy appeal for reimbursement for a drug subject to maximum allowable costs from ten to seven days. The bill would amend the definition of “maximum allowable cost.”

SB 438 would increase the days an auditing entity would be required to give notice to a pharmacy for an on-site visit from seven to 14 days. The bill would also provide several new requirements for an auditor to follow when auditing a pharmacy. The bill would increase the number of days a pharmacy would have to respond to the preliminary audit from 30 to 45 days. An entity would be required to remit money due to a pharmacy as a result of underpayment of a claim within 45 days after the appeals process and the final audit has been issued.

The bill would detail new rules and would amend existing rules that a PBM must adhere to. SB 438 would establish the Pharmacy Benefits Manager Licensure Fund within the Kansas Insurance Department. Finally, the bill would rename the Pharmacy Benefits Manager Registration Act to the Pharmacy Benefits Manager Licensure Act.

The Kansas Insurance Department states that enactment of the bill would require a more complex review of PBM applications and renewal materials. In addition, it would require the Department to review transparency reports, publish the transparency reports on its website, develop reports, review annual pharmacy network adequacy reports, and review waiver applications. As a result of these additional duties created by the bill, the Department would require 1.00 Policy Examiner FTE position at a cost of \$72,000 from its Insurance Department Service Regulation Fund in FY 2021. Of that amount, \$67,000 would be for salary and wage expenditures and \$5,000 would be for one-time office start-up costs.

The Kansas State Board of Pharmacy indicates that it could receive additional complaint referrals from the Insurance Commissioner based on information received from pharmacy benefit managers and associated dispensing pharmacies that could constitute noncompliance with the Pharmacy Act. Any additional inspections and investigations to ensure compliance with the law would be absorbed within existing resources.

The Kansas Department of Health and Environment states the bill would require it to make changes to the Medicaid information system because of the reimbursement changes set in the bill. In addition, the bill would require the PBM to also make system changes and those costs are typically passed on to the managed care organization which in turn passes the cost onto the state. An exact dollar amount of the fiscal effect of SB 438 is unknown but given the size of the Kansas

Medicaid program, the additional expenditures could be significant. Any fiscal effect associated with SB 438 is not reflected in *The FY 2021 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "L. L. Campbell". The signature is fluid and cursive, with a large initial "L" and a long, sweeping underline.

Larry L. Campbell
Director of the Budget

cc: Dan Thimmesh, Health & Environment
Bobbi Mariani, Insurance
Alexandra Blasi, Board of Pharmacy