

Substitute for HOUSE BILL No. 2598

By Committee on Insurance

2-25

1 AN ACT concerning insurance; relating to the oversight and regulation of
2 pharmacy benefits managers; the pharmacy benefits managers licensure
3 act; amending K.S.A. 2019 Supp. 40-3821, 40-3822, 40-3823, 40-3824,
4 40-3825, 40-3826, 40-3827, 40-3829 and 40-3830 and repealing the
5 existing sections.
6

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

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

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

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

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

20 (4) the commissioner has received consumer complaints that justify
21 an action under this section to protect the safety and interest of consumers;

22 (5) the licensee has failed to furnish the commissioner, or the
23 commissioner's investigators or representatives, any information legally
24 requested by the commissioner;

25 (6) the PBM has been determined by the commissioner to be in
26 violation or noncompliance with state or federal law; or

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

32 (b) This section shall be a part of and supplemental to article 38 of
33 chapter 40 of the Kansas Statutes Annotated, and amendments thereto.

34 New Sec. 2. (a) In addition to any fines or other penalties that the
35 commissioner may establish through rules and regulations, the
36 commissioner may enforce the provisions of this act as provided by K.S.A.

1 40-2405 through 40-2408 and 40-2411, and amendments thereto.

2 (b) This section shall be a part of and supplemental to article 38 of
3 chapter 40 of the Kansas Statutes Annotated, and amendments thereto.

4 New Sec. 3. (a) All compensation remitted by, or on behalf of, a
5 pharmaceutical manufacturer, developer or labeler, directly or indirectly, to
6 a carrier or to a PBM under contract with a covered entity or plan sponsor,
7 related to its prescription drug benefits shall be:

8 (1) Remitted directly to the covered person at the point of sale to
9 reduce the covered person's out-of-pocket cost associated with a particular
10 prescription drug; or

11 (2) remitted to and retained by the covered entity or plan sponsor.
12 Compensation remitted to the covered entity shall be utilized by such
13 covered entity or plan sponsor in its plan design in future plan years to
14 offset premiums for covered persons.

15 (b) Beginning with the second quarter of a contract between a PBM
16 and a covered entity or plan sponsor, the PBM shall prepare a quarterly
17 transparency report summarizing data relating to prescription drug benefits
18 for the previous quarter. Such transparency report shall be submitted to the
19 covered entity or plan sponsor before the end of the calendar quarter and
20 shall include the following information with respect to prescription drug
21 benefits specific to the covered entity or plan sponsor:

22 (1) The aggregate paid claims count and aggregate dollar amount of
23 payments made by the PBM to all pharmacies for all prescription drugs
24 dispensed to the covered entity's or plan sponsor's covered persons during
25 the previous calendar quarter;

26 (2) the aggregate dollar amount of rebates that the PBM expects to
27 receive for all prescription drugs dispensed to the covered entity's or plan
28 sponsor's covered persons during the previous calendar quarter;

29 (3) the aggregate dollar amount of any other fees or other
30 compensation the PBM has received from a drug manufacturer or
31 wholesale drug distributor related to the management or dispensing of
32 prescription drugs to plan sponsor's enrollees exclusive of prescription
33 drug rebates required in paragraph (2);

34 (4) if the PBM has a contract, agreement or other arrangement with a
35 drug manufacturer to exclusively dispense or provide a drug to a covered
36 entity's or plan sponsor's covered persons, and the application of all
37 consideration or economic benefits collected or received pursuant to any
38 such arrangement;

39 (5) prescription drug utilization information for the covered entity's or
40 plan sponsor's covered persons;

41 (6) de-identified claims level information in an electronic format that
42 allows the covered entity or plan sponsor to sort and analyze the following
43 information for each claim:

- 1 (A) If the claim required prior authorization;
- 2 (B) the amount paid to the pharmacy for each prescription, net of the
3 aggregate amount of fees or other assessments imposed on the pharmacy,
4 including point-of-sale and retroactive charges;
- 5 (C) any spread between the net amount paid to the pharmacy in
6 subparagraph (B) and the amount charged to the covered entity or plan
7 sponsor;
- 8 (D) if the pharmacy is under common control or ownership with the
9 PBM;
- 10 (E) if the pharmacy is a preferred pharmacy under the plan;
- 11 (F) if the pharmacy is a mail order pharmacy; and
- 12 (G) if covered entity's or plan sponsor's covered persons are required
13 by the plan to use the pharmacy;
- 14 (7) the aggregate paid claims count and aggregate dollar amount of
15 payments made by the PBM to pharmacies owned or controlled by the
16 PBM on behalf of the sponsor's plan;
- 17 (8) the aggregate paid claims amount and aggregate dollar amount of
18 payments made by the PBM to pharmacies not owned or controlled by the
19 PBM on behalf of the sponsor's plan; and
- 20 (9) the aggregate amount of the fees imposed on, or collected from,
21 network pharmacies or other assessments made against network
22 pharmacies, including point-of-sale fees and retroactive charges and the
23 application of those amounts collected pursuant to the contract with the
24 plan sponsor.
- 25 (c) A PBM may require a covered entity or plan sponsor to agree to a
26 nondisclosure agreement that specifies that the information reported under
27 this section is confidential and proprietary information. The PBM shall not
28 be required to disclose the information to the plan sponsor until the plan
29 sponsor has executed the nondisclosure agreement, if so required by the
30 PBM.
- 31 (d) (1) On or before the 15th day of each month, a PBM shall provide
32 each covered person with a full explanation of benefits for all claims
33 processed during the previous calendar month for the covered person. This
34 explanation of benefits shall be provided in a format approved by the
35 commissioner and, at a minimum for each prescription claim during the
36 covered month, contain:
- 37 (A) The plan ID;
- 38 (B) the beneficiary ID;
- 39 (C) the national drug code number;
- 40 (D) the drug name;
- 41 (E) the quantity;
- 42 (F) the claim amount;
- 43 (G) plan write-off amount;

- 1 (H) fees and adjustments including any applied rebates;
- 2 (I) the covered person's cost-sharing amount;
- 3 (J) ingredient reimbursement paid to the pharmacy;
- 4 (K) the professional dispensing fee paid to pharmacy; and
- 5 (L) any fee charged by the PBM to the pharmacy related to that
- 6 specific claim.

7 (2) Each report furnished to a covered person under this subsection
8 may be delivered either by electronic mail or by United States postal
9 service delivery.

10 (e) On and after July 1, 2021, and annually thereafter, each PBM shall
11 submit to the commissioner a transparency report containing data from the
12 prior calendar year as it pertains to covered entities and plan sponsors
13 doing business in Kansas. The report shall contain the following
14 information:

15 (1) The aggregate paid claims count and aggregate dollar amount of
16 payments made by the PBM to all pharmacies for each therapeutic
17 category of prescription drugs for all of the PBM's covered entity and plan
18 sponsor clients, and such payments net of all rebates and other fees and
19 payments, direct or indirect, that were credited against such payments
20 from all sources;

21 (2) the aggregate dollar amount of all rebates that the PBM received
22 from all drug manufacturers for all of the PBM's covered entity and plan
23 sponsor clients. The aggregate dollar amount of all rebates shall include
24 any utilization discounts that the PBM received from a drug manufacturer
25 or wholesale drug distributor;

26 (3) the aggregate dollar amount of all fees from all sources, direct or
27 indirect, that the PBM received for all the PBM's covered entity and plan
28 sponsor clients;

29 (4) the aggregate dollar amount of all retained rebates and other fees,
30 as described in paragraphs (2) and (3), that the PBM received from all
31 sources, direct or indirect, that were not passed through to plan sponsors;

32 (5) the percentage of the aggregate dollar amount of all rebates that
33 the retained rebate and fees represents;

34 (6) the highest, lowest and mean aggregate retained rebate and fees
35 percentage for all of the PBM's plan sponsor clients; and

36 (7) de-identified claims level information in an electronic format that
37 allows the commissioner to sort and analyze the following information for
38 each claim:

39 (A) The drug and quantity for each prescription;

40 (B) if the claim required prior authorization;

41 (C) the patient's cost-sharing paid on each prescription. This data is
42 classified pursuant to subsection (g);

43 (D) the amount paid to the pharmacy for each prescription, net of the

1 aggregate amount of fees or other assessments imposed on the pharmacy,
2 including point-of-sale and retroactive charges. This data is classified
3 pursuant to subsection (g);

4 (E) any spread between the net amount paid to the pharmacy in
5 subparagraph (D) and the amount charged to the plan sponsor. This data is
6 classified pursuant to subsection (g);

7 (F) the identity of the pharmacy for each prescription;

8 (G) if the pharmacy is under common control or ownership with the
9 PBM;

10 (H) if the pharmacy is a preferred pharmacy under the plan;

11 (I) if the pharmacy is a mail order pharmacy; and

12 (J) if the covered entity's or plan sponsor's covered persons are
13 required by the plan to use the pharmacy.

14 (f) The aggregate retained rebate and fee percentage shall be
15 calculated for each plan sponsor for rebates and fees in the previous
16 calendar year as follows: The total dollar amount of rebates and fees from
17 all drug manufacturers for all utilization by covered persons of a covered
18 entity or plan sponsor that were not passed through to the plan sponsor
19 divided by the sum total dollar amount of all rebates and fees received
20 from all sources, direct or indirect, for covered persons of a covered entity
21 or plan sponsor.

22 (g) Data, documents, materials or other information in the possession
23 or control of the commissioner of insurance that are obtained by, created by
24 or disclosed to the commissioner pursuant to this section shall be
25 considered confidential and privileged. Such data, documents, materials or
26 other information are not subject to subpoena and are not subject to
27 discovery or admissible in evidence in any private civil action. The
28 commissioner may use the data, documents, materials or other information
29 in the furtherance of a regulatory or legal action brought as a part of the
30 commissioner's official duties. The commissioner shall not otherwise make
31 the data, documents, materials or other information public without the
32 prior written consent of the PBM. Neither the commissioner nor any
33 person who received data, documents, materials or other information while
34 acting under the authority of the commissioner are permitted or required to
35 testify in any private civil action concerning data, documents, materials, or
36 information subject to this subsection that are classified as confidential,
37 protected nonpublic, or both. The provisions of this subsection shall expire
38 on July 1, 2025, unless the legislature reviews and reenacts this provision
39 pursuant to K.S.A. 45-229, and amendments thereto, prior to July 1, 2025.

40 (h) This section shall be a part of and supplemental to article 38 of
41 chapter 40 of the Kansas Statutes Annotated, and amendments thereto.

42 New Sec. 4. (a) A PBM has a fiduciary duty to a health carrier client
43 and shall discharge that duty in accordance with all applicable provisions

1 of state and federal law.

2 (b) A PBM shall exercise good faith and fair dealing in the
3 performance of its contractual duties. Any provision in a contract between
4 a PBM and a covered entity or a network pharmacy that attempts to waive
5 or limit this obligation is void.

6 (c) A PBM shall not charge a pharmacist or pharmacy a fee related to
7 the adjudication of a claim, including without limitation a fee for:

8 (1) The submission of a claim;

9 (2) enrollment or participation in a retail pharmacy network; or

10 (3) the development or management of claims processing services or
11 claims payment services related to participation in a retail pharmacy
12 network.

13 (d) A PBM shall not deny, limit or terminate a pharmacy's contract
14 based on the employment status of any employee who has an active
15 license to dispense, despite probation status, with the state board of
16 pharmacy.

17 (e) A PBM shall notify a covered entity in writing of any of its
18 activities, policies or practices that may directly or indirectly present a
19 conflict of interest with the duties imposed in this section.

20 (f) A PBM shall not impose pharmacy accreditation standards or
21 recertification requirements for a pharmacy to participate in a network that
22 are inconsistent with, more stringent than, or in addition to federal and
23 state requirements for licensure as a pharmacy in this state unless
24 authorized under this act.

25 (g) This section shall be a part of and supplemental to article 38 of
26 chapter 40 of the Kansas Statutes Annotated, and amendments thereto.

27 New Sec. 5. (a) A PBM shall provide an adequate and accessible
28 retail pharmacy network for the provision of prescription drugs. Retail
29 pharmacy networks shall comply with the following access standards:

30 (1) At least 90% of covered persons in the health benefit plan's urban
31 service area live within two miles of a retail pharmacy participating in the
32 health benefit plan's retail pharmacy network;

33 (2) at least 90% of covered persons in the health benefit plan's urban
34 service area live within five miles of a retail pharmacy designated as a
35 preferred participating pharmacy in the health benefit plan's retail
36 pharmacy network;

37 (3) at least 90% of covered persons in the health benefit plan's
38 suburban service area live within five miles of a retail pharmacy
39 participating in the health benefit plan's retail pharmacy network;

40 (4) at least 90% of covered persons in the health benefit plan's
41 suburban service area live within seven miles of a retail pharmacy
42 designated as a preferred participating pharmacy in the health benefit
43 plan's retail pharmacy network;

1 (5) at least 70% of covered persons in the health benefit plan's rural
2 service area live within 15 miles of a retail pharmacy participating in the
3 health benefit plan's retail pharmacy network;

4 (6) at least 70% of covered persons in the health benefit plan's rural
5 service area live within 18 miles of a retail pharmacy designated as a
6 preferred participating pharmacy in the health benefit plan's retail
7 pharmacy network; and

8 (7) mail order pharmacies shall not be used to meet access standards
9 for retail pharmacy networks.

10 (b) A PBM shall submit an annual pharmacy network adequacy
11 report to the commissioner describing the pharmacy network and
12 pharmacy accessibility in this state, with the PBM's license application and
13 renewal, in a manner prescribed by the commissioner.

14 (c) A PBM may apply for a waiver from the commissioner if the
15 PBM is unable to meet the network adequacy requirements under
16 subsection (a). A waiver application shall be submitted to the
17 commissioner on a form prescribed by the commissioner and shall:

18 (1) Demonstrate with specific data why the PBM is not able to meet
19 the requirements; and

20 (2) include a detailed action plan describing the steps that were and
21 will be taken to address network adequacy.

22 (d) If a waiver is granted by the commissioner, the waiver shall
23 automatically expire after one year. If a renewal of the waiver is sought,
24 the commissioner shall consider what steps the PBM has taken and how
25 the PBM has addressed network adequacy over the past three-year period.

26 (e) This section shall be a part of and supplemental to article 38 of
27 chapter 40 of the Kansas Statutes Annotated, and amendments thereto.

28 New Sec. 6. (a) A PBM that has a direct or indirect ownership interest
29 or an ownership interest through an affiliate or subsidiary in a pharmacy
30 shall disclose to its covered entity or plan sponsor client any difference
31 between the amount paid to that pharmacy and the amount charged to its
32 covered entity or plan sponsor client.

33 (b) Except as provided in subsection (c), a PBM or covered entity or
34 plan sponsor is prohibited from penalizing, requiring or providing
35 financial incentives, including variations in premiums, deductibles, co-
36 payments or coinsurance to incentivize a covered person to use a specific
37 retail pharmacy, mail order pharmacy, specialty pharmacy, or other
38 network pharmacy provider in which a PBM has an ownership interest or
39 in which the pharmacy provider has an ownership interest in the PBM.

40 (c) Subsection (b) shall not apply if the PBM or covered entity or
41 plan sponsor offers a covered person the same financial incentives for
42 using a retail pharmacy, mail order pharmacy, specialty pharmacy or other
43 network pharmacy provider in which the PBM has no ownership interest.

1 (d) A PBM or covered entity or plan sponsor is prohibited from
2 imposing limits, including quantity or refill frequency limits, on a covered
3 person's access to medication that differ based solely on whether the health
4 carrier or PBM has an ownership interest in a pharmacy or whether the
5 pharmacy has an ownership interest in the PBM.

6 (e) Nothing in subsection (d) is construed to prohibit a PBM from
7 imposing different limits, including quantity or refill frequency limits, on a
8 covered person's access to medication based on whether the enrollee uses a
9 mail order pharmacy or retail pharmacy so long as the covered person has
10 the option to use a mail order pharmacy or retail pharmacy in which the
11 PBM or health carrier does not have an ownership interest with the same
12 limits imposed.

13 (f) A PBM shall not reimburse a pharmacy or pharmacist in the state
14 an amount less than the amount that the PBM reimburses a pharmacy
15 owned by or under common ownership with a PBM for providing the
16 same covered services. The reimbursement amount paid to the pharmacy
17 shall be equal to the reimbursement amount calculated on a per-unit basis
18 using the same generic product identifier or generic code number paid to
19 the PBM-owned or PBM-affiliated pharmacy.

20 (g) A PBM or health insurer shall not prohibit a pharmacy authorized
21 to participate in the federal 340B drug pricing program under section 340B
22 of the public health service act, 42 U.S.C. 6A § 340B, or a pharmacy under
23 contract with an entity authorized to participate in the program to provide
24 pharmacy services, from participating in the PBM's or health insurer's
25 provider network. A PBM or health insurer shall not reimburse a pharmacy
26 authorized to participate in the program or a pharmacy under contract with
27 an entity participating in the federal 340B drug pricing program differently
28 from other similarly situated pharmacies.

29 (h) (1) Any pharmacy that has a contract or pharmacist who has a
30 contract, either directly or indirectly through a pharmacy services
31 administration organization, with a PBM administering any type of drug or
32 pharmacy benefit plan to provide covered drugs, devices or services at a
33 contractual reimbursement rate may decline to provide a covered drug,
34 device or service if the pharmacy or pharmacist is currently reimbursed or
35 will be reimbursed at less than the acquisition cost for the covered drug,
36 device or service.

37 (2) If the pharmacy or pharmacist declines to provide the drug, device
38 or service as authorized in this subsection, then the pharmacy or
39 pharmacist shall provide the customer with adequate information for the
40 customer to determine where the prescription for the drug, device or
41 service may be filled.

42 (i) A PBM, pharmacy services administration organization or any
43 person acting for, or on behalf of, a PBM or pharmacy services

1 administration organization shall not cancel any contract with a pharmacy
2 or pharmacist, sue for breach of contract, use the decision to decline as a
3 cause for not renewing the contract or retaliate against or penalize the
4 pharmacy or pharmacist in any way for exercising the pharmacy's or
5 pharmacist's rights under this section.

6 (j) This section shall be a part of and supplemental to article 38 of
7 chapter 40 of the Kansas Statutes Annotated, and amendments thereto.

8 New Sec. 7. (a) A PBM or health carrier shall not require or
9 demonstrate a preference for a pharmacy to dispense a therapeutically
10 equivalent or therapeutically alternative drug that costs the enrollee more
11 out-of-pocket than the prescribed drug, unless the substitution is made for
12 medical reasons that benefit the patient. Substitution made under this
13 section shall comply with the pharmacy act of the state of Kansas.

14 (b) This section shall be a part of and supplemental to article 38 of
15 chapter 40 of the Kansas Statutes Annotated, and amendments thereto.

16 New Sec. 8. (a) A PBM that contracts with a specialty pharmacy shall
17 disclose to a covered person, upon such covered person's request, the
18 covered person's out-of-pocket cost at the specialty pharmacy and the
19 covered person's out-of-pocket cost at a retail pharmacy identified by the
20 covered person as being an in-network pharmacy with the covered person's
21 health plan, for the prescription drug referenced by the covered person.

22 (b) A PBM is required to allow any pharmacy that can legally obtain
23 medications defined as specialty medications within a given health plan to
24 provide those medications to a covered person upon such covered person's
25 request.

26 (c) This section shall be a part of and supplemental to article 38 of
27 chapter 40 of the Kansas Statutes Annotated, and amendments thereto.

28 New Sec. 9. (a) A PBM that uses a preferred network of pharmacies
29 shall disclose to a covered person, upon such covered person's request, the
30 covered person's out-of-pocket cost at the preferred pharmacy and the
31 covered person's out-of-pocket cost at a nonpreferred pharmacy identified
32 by the covered person as being an in-network provider with the covered
33 person's health plan, for the prescription drug referenced by the covered
34 person.

35 (b) A PBM shall not deny any pharmacy in good standing with the
36 board of pharmacy the opportunity to participate in any pharmacy network
37 at preferred participation status.

38 (c) A PBM, or representative of a PBM, shall not cause or knowingly
39 permit the use of advertisement, promotion, solicitation, representation,
40 proposal or offer that is untrue, deceptive or misleading to patients or the
41 general public regarding access to pharmacies in a pharmacy network.

42 (d) This section shall be a part of and supplemental to article 38 of
43 chapter 40 of the Kansas Statutes Annotated, and amendments thereto.

1 New Sec. 10. (a) A PBM shall permit a pharmacy to collect the
2 amount of a covered person's cost share from any source.

3 (b) Except as provided in subsection (c), a PBM shall not deny or
4 reduce a reimbursement to a pharmacy or a pharmacist after the
5 adjudication of a disputed claim, unless:

6 (1) The pharmacy or pharmacist fraudulently submitted the original
7 claim;

8 (2) the original reimbursement was incorrect because:

9 (A) The pharmacy or pharmacist had already been paid for the
10 pharmacy service; or

11 (B) an unintentional error resulted in an incorrect reimbursement; or

12 (3) the pharmacy service was not rendered by the pharmacy or
13 pharmacist.

14 (c) Subsection (b) shall not apply if an investigative audit of
15 pharmacy records for fraud, waste, abuse or other intentional
16 misrepresentation indicates that the pharmacy or pharmacist engaged in
17 criminal wrongdoing, fraud or other intentional misrepresentation.

18 (d) This section shall be a part of and supplemental to article 38 of
19 chapter 40 of the Kansas Statutes Annotated, and amendments thereto.

20 Sec. 11. K.S.A. 2019 Supp. 40-3821 is hereby amended to read as
21 follows: 40-3821. (a) K.S.A. 2019 Supp. 40-3821 through 40-3828 *and*
22 *sections 1 through 10*, and amendments thereto, shall be known and may
23 be cited as the pharmacy benefits manager ~~registration~~ *licensure* act.

24 (b) *On and after January 1, 2021, a person shall not perform, act or*
25 *do business in this state as a PBM unless such person has a valid license*
26 *issued by the commissioner pursuant to this act.*

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

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

33 (e) *A license issued in accordance with this act shall be*
34 *nontransferable.*

35 Sec. 12. K.S.A. 2019 Supp. 40-3822 is hereby amended to read as
36 follows: 40-3822. For purposes of this act:

37 (a) "Commissioner" means the commissioner of insurance as defined
38 by K.S.A. 40-102, and amendments thereto.

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

40 (A) A nonprofit hospital or medical service corporation, health
41 insurer, health benefit plan or health maintenance organization; *or*

42 (B) ~~a health program administered by a department or the state in the~~
43 ~~capacity of provider of health coverage; or~~

1 ~~(C)~~—an employer, labor union or other group of persons organized in
2 the state that provides health coverage to covered individuals who are
3 employed or reside in the state.

4 (2) "Covered entity" shall not include any:

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

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

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

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

15 (d) *"Department" means the department of insurance.*

16 (e) *"Health benefit plan" means the same as defined in K.S.A. 40-*
17 *4602, and amendments thereto.*

18 (f) *"Health insurer" means the same as defined in K.S.A. 40-4602,*
19 *and amendments thereto.*

20 (g) *"Maximum allowable cost" or "MAC" means the maximum*
21 *amount that a pharmacy benefits manager will reimburse a pharmacy for*
22 *the cost of a generic drug.*

23 (h) "Pharmacy benefits management" means:

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

26 (A) Mail service pharmacy;

27 (B) claims processing, retail network management and payment of
28 claims to pharmacies for prescription drugs dispensed to covered
29 individuals;

30 (C) clinical formulary development and management services;

31 (D) rebate contracting and administration;

32 (E) certain patient compliance, therapeutic intervention and generic
33 substitution programs; or

34 (F) disease management programs involving prescription drug
35 utilization; and

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

39 (B) the administration or management of prescription drug benefits
40 provided by a covered insurance entity for the benefit of covered
41 individuals.

42 ~~(e)~~(i) "Pharmacy benefits manager" or "PBM" means a person,
43 business or other entity that performs pharmacy benefits management.

1 "Pharmacy benefits manager" includes any person or entity acting in a
2 contractual or employment relationship for a pharmacy benefits manager
3 in the performance of pharmacy benefits management for a covered entity.
4 ~~The term "Pharmacy benefits manager" shall~~ *does* not include a covered
5 insurance entity.

6 ~~(f)~~(j) "Person" means an individual, partnership, corporation,
7 organization or other business entity.

8 Sec. 13. K.S.A. 2019 Supp. 40-3823 is hereby amended to read as
9 follows: 40-3823. ~~Registration requirement~~*Requirements* to act as a
10 pharmacy benefits manager.

11 (a) No person shall act or operate as a ~~pharmacy benefits manager~~
12 *PBM* without first obtaining a valid ~~certificate of registration license~~
13 issued by the commissioner.

14 (b) Each person seeking a ~~certificate of registration license~~ to act as a
15 ~~pharmacy benefits manager~~ *PBM* shall file with the commissioner an
16 application for a ~~certificate of registration license~~ upon a form to be
17 furnished by the commissioner. *At a minimum*, the application form shall
18 include *the following information*:

19 (1) *The name, address and telephone number of the PBM.*

20 (2) The name, address, official position and professional
21 qualifications of each individual who is responsible for the conduct of the
22 affairs of the ~~pharmacy benefits manager~~ *PBM*, including all members of
23 the board of directors, board of trustees, executive committee, other
24 governing board or committee, the principal officers in the case of a
25 corporation, the partners or members in the case of a partnership or
26 association and any other person who exercises control or influence over
27 the affairs of the ~~pharmacy benefits manager~~ *PBM*.

28 ~~(2)~~(3) The name and address of the applicant's agent for service of
29 process in the state.

30 (4) *The name, address, phone number, email address, official position*
31 *and professional qualifications of each person responsible for setting*
32 *MAC prices, including all persons with authority to modify MAC prices in*
33 *response to MAC appeals.*

34 ~~(3)~~(5) A nonrefundable application fee of ~~\$140~~ \$2,500.

35 (c) (1) *Upon receipt of an application, the commissioner may require*
36 *additional documentation or information necessary to verify the*
37 *information contained in the application. Within 30 days of receiving an*
38 *application, the commissioner may request additional information or*
39 *submissions from an applicant for licensure and shall obtain any*
40 *document or information reasonably necessary to verify the information*
41 *contained in the application.*

42 (2) *Within 90 days after receipt of a completed application, the*
43 *network adequacy report and the applicable license fee, the commissioner*

1 *shall review the application and issue a license if the applicant is deemed*
2 *qualified under this section. If the commissioner determines the applicant*
3 *is not qualified, the commissioner shall notify the applicant and shall*
4 *specify the reason for the denial.*

5 Sec. 14. K.S.A. 2019 Supp. 40-3824 is hereby amended to read as
6 follows: 40-3824. (a) Each pharmacy benefits manager ~~registration~~ *license*
7 shall expire on March 31 each year and may be renewed annually on the
8 request of the ~~registrant~~ *licensee*. The application for renewal shall be
9 submitted on a form furnished by the commissioner and accompanied by a
10 renewal fee of ~~\$140~~ *\$2,500*. The application for renewal shall be in such
11 form and contain such matters as the commissioner prescribes.

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

17 (c) Any person who performs or is performing any pharmacy benefits
18 management service ~~on the effective date of this act must obtain a~~
19 ~~certificate of registration July 1, 2020, shall be required to obtain a license~~
20 ~~as a pharmacy benefits manager from the commissioner within 90 days~~
21 ~~after the effective date of this act by October 1, 2020, in order to continue~~
22 ~~to do business in Kansas.~~

23 Sec. 15. K.S.A. 2019 Supp. 40-3825 is hereby amended to read as
24 follows: 40-3825. ~~In accordance with the provisions of the rules and~~
25 ~~regulations filing act, K.S.A. 77-415 et seq., and amendments thereto, (a)~~
26 The commissioner may adopt, amend and revoke rules and regulations
27 governing the administration and enforcement of this act, including, but
28 not limited to:

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

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

32 ~~(c)(3)~~ (3) such other rules and regulations as the commissioner may deem
33 necessary to ~~carry out~~ *implement and administer* the provisions of this act.

34 (b) *The commissioner shall adopt, amend and revoke all such*
35 *necessary rules and regulations not later than July 1, 2022.*

36 Sec. 16. K.S.A. 2019 Supp. 40-3826 is hereby amended to read as
37 follows: 40-3826. Any person who acts as a ~~pharmacy benefits manager~~
38 ~~PBM~~ without being ~~registered~~ *licensed* as required by this act shall be
39 subject to a fine of ~~\$500 for each~~ *\$5,000 for the period that the PBM is*
40 *found to be in violation.*

41 (b) *If a PBM is found to be in violation of or non-compliant with any*
42 *state or federal law, the PBM shall be subject to a fine of \$5,000 per*
43 *violation and \$5,000 per occurrence of non-compliance.*

1 Sec. 17. K.S.A. 2019 Supp. 40-3827 is hereby amended to read as
2 follows: 40-3827. *There is hereby established in the state treasury the*
3 *pharmacy benefits manager licensure fund. Such fund shall be*
4 *administered by the commissioner for costs related to administering the*
5 *pharmacy benefits manager licensing act. All expenditures from the*
6 *pharmacy benefits manager licensure fund shall be made in accordance*
7 *with appropriation acts upon warrants of the director of accounts and*
8 *reports issued pursuant to vouchers approved by the commissioner or by*
9 *the commissioner's designee. The commissioner shall remit all moneys*
10 *received by or for the commissioner under the provisions of this act to the*
11 *state treasurer*~~at least monthly~~ *in accordance with the provisions of K.S.A.*
12 *75-4215, and amendments thereto. Upon receipt of each such remittance,*
13 *the state treasurer shall deposit the entire amount thereof in the state*
14 *treasury and such amount shall be credited to the pharmacy benefits*
15 *manager*~~registration~~ *licensure fund.*

16 Sec. 18. K.S.A. 2019 Supp. 40-3829 is hereby amended to read as
17 follows: 40-3829. As used in ~~this act~~ *K.S.A. 2019 Supp. 40-3829 and 40-*
18 *3830, and amendments thereto:*

19 (a) ~~"List" means the list of drugs for which maximum allowable costs~~
20 ~~have been established;~~

21 ~~(b) "Maximum allowable cost" or "MAC" means the maximum~~
22 ~~amount that a pharmacy benefits manager will reimburse a pharmacy for~~
23 ~~the cost of a generic drug includes without limitation:~~

24 (1) *Average acquisition cost, including national average drug*
25 *acquisition cost;*

26 (2) *average manufacture price;*

27 (3) *average wholesale price;*

28 (4) *brand effective rate or generic effective rate;*

29 (5) *discount indexing;*

30 (6) *federal upper limits;*

31 (7) *wholesale acquisition cost; and*

32 (8) *any other term that a pharmacy benefits manager or a healthcare*
33 *insurer may use to establish reimbursement rates to a pharmacist or*
34 *pharmacy for pharmacist services;*

35 (b) *"maximum allowable cost list" or "MAC list" means a listing of*
36 *drugs or other methodology used by a pharmacy benefits manager,*
37 *directly or indirectly, that sets the maximum allowable payment to a*
38 *pharmacy or pharmacist for a generic drug, brand-name drug, biologic*
39 *product or other prescription drug;*

40 (c) *"network pharmacy" means a pharmacy that contracts with a*
41 *pharmacy benefits manager; and*

42 (d) *"pharmacy benefits manager" or "PBM" shall have the same*
43 *meaning as means the same as defined in K.S.A. 2019 Supp. 40-3822(e),*

1 and amendments thereto.

2 Sec. 19. K.S.A. 2019 Supp. 40-3830 is hereby amended to read as
3 follows: 40-3830. A pharmacy benefits manager shall:

4 (a) *Not pay or reimburse a pharmacy or pharmacist for the*
5 *ingredient drug product component of pharmacist services in an amount*
6 *less than:*

7 (1) *The pharmacy's usual and customary price;*

8 (2) *the national average drug acquisition cost; or*

9 (3) *the pharmacy's wholesale acquisition cost if the national average*
10 *drug acquisition cost is unavailable.*

11 (b) *Pay to every pharmacy a professional dispensing fee that is equal*
12 *to the dispensing fee set in the state program for medical assistance,*
13 *authorized by K.S.A. 39-709, and amendments thereto.*

14 (c) *Use a single MAC list to establish the maximum amount to be*
15 *paid to a pharmacy provider for a generic drug or a brand-name drug that*
16 *has at least one generic alternative available. A PBM shall use the same*
17 *MAC list for each pharmacy provider.*

18 (d) ~~Shall~~ *Not place a drug on a MAC list unless there are at least two*
19 *therapeutically equivalent multi-source generic drugs, or at least one*
20 *generic drug available from at least one manufacturer, generally available*
21 *for purchase, without conditions, by network pharmacies from national or*
22 *regional wholesalers and the national drug code, NDC, for the drug is not*
23 *obsolete.*

24 ~~(b) Shall~~(e) *Provide to each network pharmacy at the beginning of*
25 *the term of a contract and upon request thereafter, the sources utilized to*
26 *determine the maximum allowable cost MAC price.*

27 ~~(c) Shall provide a process for each network pharmacy provider to~~
28 ~~readily access the maximum allowable price specific to that provider.~~(f)

29 *Upon request of a network pharmacy, disclose the sources utilized for*
30 *setting MAC price rates on each MAC price list included under the*
31 *contract and identify each MAC price list for each plan sponsor and*
32 *pharmacy network rate schedule that applies to the network pharmacy. A*
33 *PBM shall make the list of the maximum allowable costs available in its*
34 *entirety, in a readily accessible format to all contracted pharmacies.*

35 (g) *Ensure that the MAC prices are set at sufficient levels to ensure*
36 *products are readily available to pharmacies to purchase at or below the*
37 *MAC price established for similarly situated pharmacies within the PBM's*
38 *preferred network.*

39 ~~(d) Shall~~(h) *Review and update each applicable—maximum—
40 ~~allowable cost~~ *MAC list every seven business days, noting any price*
41 *changes from the previous list, including retroactive MAC adjustments*
42 *based on successful MAC appeals by a participating pharmacy in a*
43 *separate section of the list, provide a means by which network pharmacies**

1 *may promptly review current prices in an electronic, print or telephonic*
2 *format and apply the updates to reimbursements no later than one business*
3 *day at no cost to the pharmacy. Such information shall be available to the*
4 *pharmacy or the pharmacy's representative in a comprehensive*
5 *downloadable format that includes all national drug codes, the unit MAC*
6 *price allowed and an identifying code connecting fee schedules and*
7 *patients to the respective MAC list used to price claims for reimbursement.*

8 (i) *Ensure that the MAC prices are not set below sources utilized by*
9 *the PBM.*

10 ~~(e) Shall(j)~~ *Ensure that dispensing fees are not included in the*
11 *calculation of maximum allowable cost.*

12 ~~(f) Shall(k)~~ *Establish a process by which a network pharmacy may*
13 *appeal reimbursement for a drug subject to maximum allowable cost as*
14 *follows:*

15 (1) *The network pharmacy must shall file an appeal not later than*
16 *10 15 business days after the fill date.*

17 (2) *The PBM shall provide a response to the appealing network*
18 *pharmacy not later than 10 seven business days after receiving an*
19 *appeal request containing information sufficient for the PBM to process*
20 *the appeal as specified by the contract.*

21 (3) *If the appeal is upheld, the PBM:*

22 (A) *Shall make the adjustment in the drug price effective no later than*
23 *one business day after the appeal is resolved;*

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

27 (C) *permit the appealing pharmacy to reverse and rebill the appealed*
28 *claim.*

29 (4) *If the appeal is denied, the PBM shall provide the appealing*
30 *pharmacy the specific sources utilized for setting the maximum allowable*
31 *cost, including the national drug code number from a national or regional*
32 *wholesaler operating in Kansas where the drug is generally available for*
33 *purchase at a price equal to or less than the maximum allowable cost, and*
34 *when applicable, may be substituted lawfully.*

35 (5) *If an appeal is upheld, the PBM shall:*

36 (A) *Make an adjustment to the MAC price not later than one business*
37 *day after the date of determination and update the MAC price in the*
38 *adjudication system so that the pharmacy may reverse and reprocess the*
39 *claim for the increased reimbursement; and*

40 (B) *make the determined price adjustment applicable to all similarly*
41 *situated network pharmacy providers. The PBM shall waive timely filing*
42 *requirements to allow pharmacies the ability to reverse and reprocess*
43 *claims to comply with this paragraph.*

1 Sec. 20. K.S.A. 2019 Supp. 40-3821, 40-3822, 40-3823, 40-3824, 40-
2 3825, 40-3826, 40-3827, 40-3829 and 40-3830 are hereby repealed.

3 Sec. 21. This act shall take effect and be in force from and after its
4 publication in the statute book.