

KANSAS OFFICE *of*
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MEMORANDUM

To: House Committee on Insurance and Pensions
From: Office of Revisor of Statutes
Date: Monday, March 7, 2022
Subject: **HB 2733**; Enacting the Pharmacy Benefits Manager Licensure Act and requiring licensure rather than registration of such entities.

In *Rutledge v. Pharmaceutical Care Management Association*, 141 S.Ct. 474 (2020), Pharmaceutical Care Management Association (PCMA) alleged that an Arkansas statute ("Act 900") that regulated how pharmacy benefits managers (PBMs) created maximum allowable cost (MAC) lists which, in turn, set reimbursement rates to pharmacies dispensing generic drugs, was preempted by preempt the Employee Retirement Income Security Act of 1974 (ERISA). The Supreme Court, in a unanimous decision, held that, as cost-regulating statute, Act 900 did not have an impermissible connection with or reference to ERISA and thus was not preempted by ERISA.

This finding by the Court provides a heretofore unavailable means by which a state may increase its regulation over PBMs and allows a state to increase its voice in the regulation of PBM drug pricing and reimbursement activities.

HB 2733, if enacted, would achieve three main goals: (1) The bill would end the registration of PBMs in the state and instead require them to be licensed; (2) based upon their licensure, the Insurance Department would have oversight over PBMs which would allow it to hold PBMs accountable to current law and a regulatory structure contained in the bill; and (3) amend the current MAC appeals process.

Section	Topic	Statute	Provisions
1	Oversight	New	<p>Actions warranting discipline against a PBM's license:</p> <ol style="list-style-type: none"> 1) Fraud or misrepresentation in the application process; 2) Violation of rules and regulations or order or directive of the commissioner; 3) Fraud 4) Failure to furnish requested information; 5) Violation of or non-compliance with state or federal law; 6) Failure to timely submit a renewal application and requested information.
2	Licensure	K.S.A. 40-3821	<ol style="list-style-type: none"> 1) Name and citation of act; 2) Licensure required on and after January 1, 2023 3) Licenses issued are nontransferable.
3	Definitions	K.S.A. 40-3822	<p>Newly added definitions:</p> <ol style="list-style-type: none"> 1) "Department" 2) "ERISA" 3) "Health benefit plan" 4) "Health insurer" 5) "Maximum allowable cost"
4	Licensure	K.S.A. 40-3233	<ol style="list-style-type: none"> 1) Requirements to obtain licensure as a PBM: 2) Information required: <ol style="list-style-type: none"> a. Contact information; b. Network adequacy report; c. Template contract including dispute resolution process; d. PBM's charter documents; e. Application Fee f. Timeline for approval 3) Application timeline 4) Confidentiality of information and documents
5	Licensure	K.S.A. 40-3824	License renewal process and fees
6	General	K.S.A. 40-3825	<ol style="list-style-type: none"> 1) Rules and regulations authorized 2) Commissioner's responsibilities: <ol style="list-style-type: none"> a) Adopt b) Amend; and c) Revoke all necessary rules and regulations necessary to carry out the act.
7	Oversight	K.S.A. 40-3826	<p>Violations of act; Hearing process Penalties</p>

Section	Category	Statute	Provisions
9	MAC	K.S.A. 40-3829	Establishment of pharmacy benefits manager licensure fee fund.
9	MAC	K.S.A. 40-3829	New MAC definitions a) Pharmacy benefits plan b) Wholesaler
10	MAC	K.S.A. 40-3830	Requirements of PBMs pertaining to MAC; MAC challenge process; Appeal of challenge process decision