

House Substitute for SENATE BILL No. 28

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(j) "Pharmacy benefits management" means:

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

(A) Mail service pharmacy;

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

(C) clinical formulary development and management services;

(D) rebate contracting and administration;

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

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

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

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

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

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

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

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

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

shall include *the following information*:

(1) *The name, address and telephone number of the pharmacy benefits manager.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- ~~(a)~~(1) The content of the application form;
- ~~(b)~~(2) the content of any other form or report required to implement this act; and
- ~~(c)~~(3) such other rules and regulations as the commissioner may deem necessary to carry out the provisions of this act.

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

Sec. 7. K.S.A. 40-3826 is hereby amended to read as follows: 40-3826. (a) *If the commissioner has reason to believe that a pharmacy benefits manager has been engaged in this state or is engaging in this state in activity that violates the pharmacy benefits manager licensure act, the commissioner shall issue and serve upon such pharmacy benefits manager a statement of the charges of any such violation and conduct a hearing thereon in accordance with the provisions of the Kansas administrative procedure act.*

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

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

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

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

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

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

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

(2) *The reopening of any such order may occur if, in the*

commissioner's opinion, the conditions of fact or law have changed to warrant such an action or if such an action is warranted in the public interest.

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

Sec. 8. K.S.A. 40-3827 is hereby amended to read as follows: 40-3827. (a) *There is hereby established in the state treasury the pharmacy benefits manager licensure fund. Such fund shall be administered by the commissioner for costs related to administering the pharmacy benefits manager licensing act. All expenditures from the pharmacy benefits manager licensure fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the commissioner or by the commissioner's designee.*

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

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

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

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

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

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

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

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

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

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

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

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

(d) ~~Shall~~ review and update each applicable maximum allowable

cost list every seven business days and apply the updates to reimbursements ~~no~~ not later than one business day;

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

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

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

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

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

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

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

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

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

(1) *The prescription number;*

(2) *the provider's name;*

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

(4) *the date of the fill;*

(5) *the reimbursement amount; and*

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

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

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

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

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

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

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

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

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

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE concurred in
HOUSE amendments _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.