

HOUSE BILL No. 2734

By Committee on Appropriations

2-20

1 AN ACT concerning pharmacy benefits managers; relating to requirements
2 and fiduciary duties; disclosure of certain information to covered
3 entities; civil penalty; audit of the pharmacy benefits management
4 contract with the state health care benefits program.
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6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. (a) For the purposes of this section:

8 (1) "Pharmacy benefits management" means the procurement of
9 prescription drugs at a negotiated rate for dispensation within this state to
10 covered individuals, the administration or management of prescription
11 drug benefits provided by a covered entity for the benefit of covered
12 individuals or any of the following services provided with regard to the
13 administration of pharmacy benefits:

14 (A) Mail service pharmacy;

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

18 (C) clinical formulary development and management services;

19 (D) rebate contracting and administration;

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

22 (F) disease management programs.

23 (2) "Pharmacy benefits manager" means an entity that performs
24 pharmacy benefits management. "Pharmacy benefits manager" includes a
25 person or entity acting for a pharmacy benefits manager in a contractual or
26 employment relationship in the performance of pharmacy benefits
27 management for a covered entity and includes mail service pharmacy.

28 (b) A pharmacy benefit manager owes a fiduciary duty to a covered
29 entity and shall discharge that duty in accordance with provisions of state
30 and federal law.

31 (c) A pharmacy benefits manager shall perform its duties with care,
32 skill, prudence and diligence and in accordance with the standards of
33 conduct applicable to a fiduciary in an enterprise of like character and with
34 like aims.

35 (d) A pharmacy benefits manager shall notify the covered entity in
36 writing of any activity, policy or practice of the pharmacy benefits

1 manager that directly or indirectly presents any conflict of interest with the
2 duties imposed by this section.

3 (e) A pharmacy benefits manager shall provide to a covered entity all
4 financial and utilization information requested by the covered entity
5 relating to the provision of benefits to covered individuals through that
6 covered entity and all financial and utilization information relating to
7 services to such covered entity. A pharmacy benefits manager providing
8 information under this subsection may designate that material as
9 confidential. Information designated as confidential by a pharmacy
10 benefits manager and provided to a covered entity under this subsection
11 may not be disclosed by the covered entity to any person without the
12 consent of the pharmacy benefits manager, except that disclosure may be
13 ordered by a court of this state for good cause shown or made in a court
14 filing under seal unless or until otherwise ordered by a court. The attorney
15 general may investigate potential violations of this section and may
16 demand disclosure of information by the pharmacy benefits manager.

17 (f) If a pharmacy benefits manager makes a substitution in which the
18 substitute drug costs more than the prescribed drug, the pharmacy benefits
19 manager shall disclose to the covered entity the cost of both drugs and any
20 benefit or payment directly or indirectly accruing to the pharmacy benefits
21 manager as a result of the substitution.

22 (g) The pharmacy benefits manager shall transfer in full to the
23 covered entity any benefit or payment received in any form by the
24 pharmacy benefits manager either as a result of a prescription drug
25 substitution under subsection (f) or as a result of the pharmacy benefits
26 manager's substituting a lower-priced generic and therapeutically
27 equivalent drug for a higher-priced prescribed drug.

28 (h) A pharmacy benefits manager that derives any payment or benefit
29 for the dispensation of prescription drugs within the state based on volume
30 of sales for certain prescription drugs or classes or brands of drugs within
31 the state shall pass such payment or benefit on in full to the covered entity.

32 (i) A pharmacy benefits manager shall disclose to the covered entity
33 all financial terms and arrangements for remuneration of any kind that
34 apply between the pharmacy benefits manager and any prescription drug
35 manufacturer or labeler, including, but not limited to, formulary
36 management and drug-switch programs, educational support, claims
37 processing and pharmacy network fees that are charged from retail
38 pharmacies and data sales fees. A pharmacy benefits manager providing
39 information under this subsection may designate that material as
40 confidential. Information designated as confidential by a pharmacy
41 benefits manager and provided to a covered entity under this subsection
42 may not be disclosed by the covered entity to any person without the
43 consent of the pharmacy benefits manager, except that disclosure may be

1 ordered by a court of this state for good cause shown or made in a court
2 filing under seal unless or until otherwise ordered by a court. The attorney
3 general may investigate potential violations of this section and may
4 demand disclosure of information by the pharmacy benefits manager.

5 (j) A pharmacy benefits manager or insurer shall require a contracted
6 pharmacy to charge to an enrollee or insured person the pharmacy's usual
7 and customary price of filling the prescription or the contracted
8 copayment, whichever is less.

9 (k) Compliance with the requirements of this section is required in all
10 contracts for pharmacy benefits management entered into in this state or
11 by a covered entity in this state.

12 (l) A pharmacy benefits manager who violates this section may be
13 assessed a civil fine of not more than \$10,000.

14 (m) The division of health care finance of the department of health
15 and environment shall develop appropriate audit procedures to determine
16 if the pharmacy benefits manager for the state health care benefits program
17 established pursuant to K.S.A. 75-6501 et seq., and amendments thereto,
18 and the pharmacy benefits management contract entered into on behalf of
19 the state health care benefits program, complies with the requirements of
20 this section and any other law applicable to pharmacy benefits managers.

21 Sec. 2. This act shall take effect and be in force from and after its
22 publication in the statute book.