

SESSION OF 2018

SUPPLEMENTAL NOTE ON SENATE BILL NO. 351

As Amended by Senate Committee of the Whole

Brief*

SB 351, as amended, would create the Kansas Pharmacy Patients Fair Practices Act (Act).

Definitions

For purposes of the Act, the bill would define “covered person” to mean the same as defined in KSA 2017 Supp. 40-3822: member, policyholder, subscriber, enrollee, beneficiary, dependent, or other individual participating in a health benefit plan.

The bill would define “health carrier” to mean the same as defined in KSA 2017 Supp. 40-2,195: any insurance company, nonprofit medical and hospital corporation, municipal group-funded pool, or fraternal benefit society that offers a policy of accident and sickness insurance subject to Chapter 40 of the *Kansas Statutes Annotated*.

Additionally, the bill would define “pharmacy benefits manager” (PBM) to mean the same as defined in KSA 2017 Supp. 40-3822: a person, business, or other entity that performs pharmacy benefits management. PBM includes any person or entity acting in a contractual or employment relationship for a PBM in the performance of pharmacy benefits management for a covered entity.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

Co-payments

The bill would specify co-payments applied by a health carrier for a prescription drug may not exceed the total submitted charges by the network pharmacy.

Information Provided by a Pharmacy or Pharmacist to a Covered Person

A pharmacy or pharmacist would have the right to provide a covered person with information regarding the amount of the covered person's cost share for a prescription drug. Further, the bill would specify neither a pharmacy or pharmacist would be proscribed by a PBM from discussing any such information or selling a more affordable alternative to the covered person, if such alternative is available.

Effective Date

The bill would apply to any contract between a PBM and a pharmacy, pharmacy services administration organization, or group purchasing organization entered or renewed on and after January 1, 2019.

Supplemental Policies Exempt from the Act

The provisions of the bill would not be applicable to any policy or certificate providing coverage for any specified disease, specified accident, or accident-only coverage; credit, dental, disability income, hospital indemnity, long-term care insurance, vision care, or any other limited supplemental benefit; Medicare supplement policy, as defined by the Commissioner of Insurance by rule and regulation; any coverage issued as a supplement to liability insurance, workers compensation, or similar insurance; automobile medical-payment insurance, or any other insurance under which benefits are payable with or without regard to fault, whether written on a group, blanket, or individual basis.

Background

The bill was introduced by the Senate Committee on Public Health and Welfare at the request of the Kansas Pharmacists Association (KPhA). The bill was referred to the Senate Committee on Financial Institutions and Insurance. In the Senate Committee hearing, a representative of KPhA testified in support of the bill, stating the bill provides protections for patients related to the cost of medications, medication alternatives, and choice of pharmacy provider; eliminates practices that impede cost transparency and restrict the patient's choice of provider; and allows pharmacists to have the ability to discuss lower cost medication alternatives with their patients.

Representatives of Prime Therapeutics, Express Scripts, and OptumRx testified in opposition to the bill, as introduced. The opponents generally stated the bill would interfere with the contractual relationship between a PBM and a pharmacy and unnecessarily expand oversight by the Kansas Insurance Department (Department) to include civil fines. They also expressed concern with language related to mail pharmacy services. Written-only opponent testimony was provided by a representative of America's Health Insurance Plans.

The Senate Committee amended the bill to remove certain defined terms and add the defined term for "health carrier," clarify co-payments and charges, specify the right of the pharmacy or pharmacist to provide a covered person with information on cost-sharing, remove certain PBM prohibitions, remove reference to the Commissioner of Insurance, and remove specification of severability.

The Senate Committee of the Whole amended the bill to exempt supplemental insurance policies from provisions of the Act.

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Department indicates enactment of the bill would have no fiscal effect.