AN ACT concerning pharmacy benefits managers; relating to requirements and fiduciary duties; disclosure of certain information to covered entities; civil penalty; audit of the pharmacy benefits management contract with the state health care benefits program.

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

Section 1. (a) For the purposes of this section:
(1) "Pharmacy benefits management" means the procurement of prescription drugs at a negotiated rate for dispensation within this state to covered individuals, the administration or management of prescription drug benefits provided by a covered entity for the benefit of covered individuals or any of the following services provided with regard to the administration of 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; and
(F) disease management programs.
(2) "Pharmacy benefits manager" means an entity that performs pharmacy benefits management. "Pharmacy benefits manager" includes a person or entity acting for a pharmacy benefits manager in a contractual or employment relationship in the performance of pharmacy benefits management for a covered entity and includes mail service pharmacy.
(b) A pharmacy benefit manager owes a fiduciary duty to a covered entity and shall discharge that duty in accordance with provisions of state and federal law.
(c) A pharmacy benefits manager shall perform its duties with care, skill, prudence and diligence and in accordance with the standards of conduct applicable to a fiduciary in an enterprise of like character and with like aims.
(d) A pharmacy benefits manager shall notify the covered entity in writing of any activity, policy or practice of the pharmacy benefits
manager that directly or indirectly presents any conflict of interest with the

duties imposed by this section.

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

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

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

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

(i) A pharmacy benefits manager shall disclose to the covered entity
all financial terms and arrangements for remuneration of any kind that
apply between the pharmacy benefits manager and any prescription drug
manufacturer or labeler, including, but not limited to, formulary
management and drug-switch programs, educational support, claims
processing and pharmacy network fees that are charged from retail
pharmacies and data sales fees. A pharmacy benefits manager providing
information under this subsection may designate that material as
confidential. Information designated as confidential by a pharmacy
benefits manager and provided to a covered entity under this subsection
may not be disclosed by the covered entity to any person without the
consent of the pharmacy benefits manager, except that disclosure may be
ordered by a court of this state for good cause shown or made in a court filing under seal unless or until otherwise ordered by a court. The attorney general may investigate potential violations of this section and may demand disclosure of information by the pharmacy benefits manager.

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

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

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

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

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