

HOUSE BILL No. 2717

By Committee on Health and Human Services

1-28

AN ACT concerning health care; relating to the cost of prescription drugs; enacting the Kansas prescription drug card program act.

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

Section 1. As used in this act unless context shows otherwise:

(a) "Department" means the state department of social and rehabilitation services.

(b) "Labeler" means an entity or person that receives prescription drugs from a manufacturer or wholesaler and repackages those drugs for later retail sale, and that has a labeler code from the federal food and drug administration under 21 CFR 207.20 as in effect on the effective date of this act.

(c) "Manufacturer" means a manufacturer of prescription drugs as defined in 42 U.S.C. section 1396r-8(k)(5) as in effect on the effective date of this act. The term manufacturer shall also include any subsidiary or affiliate of a manufacturer.

(d) "Participating retail pharmacy" means a retail pharmacy or other business licensed under the pharmacy act of the state of Kansas to dispense prescription drugs in this state that:

(1) Participates in the state medicaid program; or

(2) voluntarily agrees to participate in the prescription drug card program established by this act.

(e) "Secretary" means the secretary of the department of social and rehabilitation services.

(f) "Wholesaler" means a business licensed under the pharmacy act of the state of Kansas to distribute prescription drugs in this state.

Sec. 2. (a) The secretary shall negotiate discount prices or rebates for prescription drugs from drug manufacturers and labelers. A drug manufacturer or labeler that sells prescription drugs in this state may voluntarily elect to negotiate with the secretary:

(1) Supplemental rebates for the medicaid program over and above those required under 42 U.S.C. section 1396r-8;

(2) discount prices or rebates for the prescription drug card program established by this act; and

(3) discount prices or rebates for any other state programs that pay

1 for or acquire prescription drugs.

2 (b) In negotiating rebate terms, the secretary shall take into consid-
3 eration: The rebate calculated under the medicaid rebate program pur-
4 suant to 42 U.S.C. section 1396r-8, the price provided to eligible entities
5 under 42 U.S.C. section 256b, and any other available information on
6 prescription drug prices, discounts and rebates.

7 (c) (1) The secretary shall review whether to place a manufacturer's
8 or labeler's products on the prior authorization list for the state medicaid
9 program and take similar actions involving prior authorization or formu-
10 laries for any other state-funded or operated prescription drug program,
11 if:

12 (A) The secretary and a drug manufacturer or labeler fail to reach
13 agreement on the terms of a supplemental medicaid rebate or a discount
14 or rebate for the prescription drug card program established by this act;
15 and

16 (B) the discounts or rebates offered by the manufacturer or labeler
17 are not as favorable to the state as the prices provided to eligible entities
18 under 42 U.S.C. section 256b.

19 (2) Any prior authorization must meet the requirements of 42 U.S.C.
20 section 1396r-8(d)(5).

21 (3) The names of manufacturers and labelers that enter into rebate
22 agreements are public information and the department shall release this
23 information to the public and actively distribute such information to doc-
24 tors, pharmacists and other health professionals.

25 Sec. 3. (a) The department shall establish the Kansas prescription
26 drug card program as a state pharmaceutical assistance program under
27 42 U.S.C. section 1396r-8(c)(1)(C)(i)(III), to provide discounts to partic-
28 ipants for drugs covered by a rebate agreement. Using sums from nego-
29 tiated rebates, the department shall contract with wholesalers and/or par-
30 ticipating retail pharmacies to deliver discounted prices to participants in
31 the Kansas prescription drug card program.

32 (b) The drug discounts received by Kansas prescription drug card
33 participants shall be calculated by the secretary on a quarterly basis. That
34 calculation shall provide discounts approximately equal to the amount of
35 the negotiated drug rebate minus an amount necessary, as determined
36 by the secretary, to cover the reasonable administrative costs of the Kan-
37 sas prescription drug card program.

38 (c) (1) An individual is eligible to participate in the Kansas prescrip-
39 tion drug card program if the individual is a resident of this state and is
40 eligible for participation in the medicare program or has a net family
41 income below 300% of the federal poverty level.

42 (2) An individual is ineligible to participate in the Kansas prescription
43 drug card program if such individual is eligible for assistance under the

1 state's medicaid program or is covered by an insurance policy that pro-
2 vides benefits for prescription drugs equal to or greater than the benefits
3 provided under the Kansas prescription drug card program, as deliniated
4 by rules and regulations promulgated by the secretary.

5 (3) The department shall establish, by rule and regulation, simple
6 procedures for enrolling Kansas prescription drug card program partici-
7 pants and shall undertake outreach efforts to build public awareness of
8 the program and maximize enrollment by eligible residents.

9 (d) (1) The secretary shall adopt rules and regulations requiring dis-
10 closure by participating retail pharmacies to the Kansas prescription drug
11 card program participants of the amount of savings provided as a result
12 of such program. The rules and regulations must protect information that
13 is proprietary in nature.

14 (2) A participating retail pharmacy shall verify to the department the
15 amounts charged to Kansas prescription drug card program participants
16 and nonparticipants, and shall provide the department with utilization
17 data necessary to calculate rebates from manufacturers and labelers. The
18 department shall protect the confidentiality of all information subject to
19 confidentiality protection under state or federal law, rule or regulation.
20 The department may not impose transaction charges on any wholesaler
21 or participating retail pharmacy that submit claims or receive payments
22 under the Kansas prescription drug card program.

23 (3) Subject to the appropriations available therefor, each wholesaler
24 or participating retail pharmacy shall be paid in advance for Kansas pre-
25 scription drug card program discounts or shall be reimbursed by the de-
26 partment on a weekly basis.

27 (4) The department may require a wholesaler or participating retail
28 pharmacy to segregate drugs under the Kansas prescription drug card
29 program from other drug stock. The department may require a wholesaler
30 or participating retail pharmacy to maintain records of acquisition and
31 disposition of drugs under the Kansas prescription drug card program
32 separately from such wholesaler's or pharmacy's other records.

33 Sec. 4. (a) Any disputes or discrepancies in rebate amounts must be
34 resolved using the process established in this section.

35 (1) If there is a discrepancy in the manufacturer's or labeler's favor
36 between the amount claimed by a pharmacy and the amount rebated by
37 the manufacturer or labeler, the department, at the department's ex-
38 pense, may hire a mutually agreed-upon independent auditor. If a dis-
39 crepancy still exists following the audit, the manufacturer or labeler shall
40 justify the reason for the discrepancy or make payment to the department
41 for any additional amount due.

42 (2) If there is a discrepancy against the interest of the manufacturer
43 or labeler in the information provided by the department to the manu-

1 factorer or labeler regarding the manufacturer's or labeler's rebate, the
2 manufacturer or labeler, at the manufacturer's or labeler's expense, may
3 hire a mutually agreed-upon independent auditor to verify the accuracy
4 of the data supplied to the department. If a discrepancy still exists follow-
5 ing the audit, the department shall justify the reason for the discrepancy
6 or refund to the manufacturer any excess payment made by the manu-
7 facturer or labeler.

8 (3) Following the procedures established in paragraph (1) or (2), ei-
9 ther the department or the manufacturer or labeler may request a hear-
10 ing. Supporting documentation must accompany the request for a hear-
11 ing. Any hearing shall be conducted in accordance with the Kansas
12 administrative procedure act.

13 (b) The department shall report the enrollment and financial status
14 of the Kansas prescription drug card program and report savings from
15 supplemental medicaid rebates to the speaker of the house of represen-
16 tatives and the president of the senate on or before February 1 each year.

17 (c) Where the secretary finds that it is beneficial to both the Kansas
18 prescription drug card program and any other state program, including
19 the state medicaid program, to combine drug pricing negotiations to max-
20 imize drug rebates, the secretary shall do so.

21 (d) The department may seek any waivers of federal law, rule or reg-
22 ulation necessary to implement the provisions of this section.

23 Sec. 5. (a) In the performance of duties under this act, the secretary
24 may enter into any contracts or purchase any goods or services deemed
25 necessary to implement this act.

26 (b) On or before July 1, 2003, the secretary shall adopt rules and
27 regulations necessary to implement the provisions of this act.

28 Sec. 6. (a) There is hereby established in the state treasury the Kan-
29 sas prescription drug card program fund. All moneys received from par-
30 ticipating manufacturers and labelers paying rebates and any appropria-
31 tions or allocations designated to the fund shall be remitted in accordance
32 with the provisions of K.S.A. 75-4215, and amendments thereto, to the
33 state treasurer. The state treasurer shall deposit the entire amount in the
34 state treasury and credit it to the state prescription rebate fund.

35 (b) The secretary of social and rehabilitation services shall administer
36 this fund.

37 (c) All moneys credited to the Kansas prescription drug card program
38 fund shall only be used for expenditures to reimburse participating retail
39 pharmacies for discounted prices provided to Kansas prescription drug
40 card program participants, and to reimburse the department for the costs
41 of administering the program, including contracted services, computer
42 costs, professional fees paid to retail pharmacies and other related pro-
43 gram costs.

1 (d) On or before the 10th day of each month the director of accounts
2 and reports shall transfer from the state general fund to the state pre-
3 scription rebate fund interest earnings based on:

4 (1) The average daily balance of moneys in the state prescription re-
5 bate fund for the preceding month; and

6 (2) the net earnings rate of the pooled money investment portfolio
7 for the preceding month.

8 (e) All expenditures from the state prescription rebate fund shall be
9 made in accordance with appropriation acts upon warrants of the director
10 of accounts and reports issued pursuant to vouchers approved by the
11 secretary.

12 Sec. 7. If any provision of this act or the application thereof to any
13 person or circumstance is held invalid, the validity of the remainder of
14 the act and of the application of such provision to other persons and
15 circumstances shall not be affected thereby.

16 Sec. 8. Sections 1 through 8 inclusive, and amendments thereto, shall
17 be known and may be cited as the Kansas prescription drug card program
18 act.

19 Sec. 9. This act shall take effect and be in force from and after its
20 publication in the statute book.

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