

HOUSE Substitute for Substitute for SENATE BILL No. 422

AN ACT concerning the department of social and rehabilitation services; relating to prescription drugs under the state medicaid program; providing for a state medicaid preferred drug formulary and an advisory committee therefor; medicaid drug utilization review board duties, procedures and composition; amending K.S.A. 39-7,118, 39-7,119 and 39-7,120 and K.S.A. 2001 Supp. 77-421 and repealing the existing sections.

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

New Section 1. (a) The secretary of social and rehabilitation services may establish an advisory committee pursuant to K.S.A. 75-5313, and amendments thereto, to advise the secretary in the development of a preferred formulary listing of covered drugs by the state medicaid program.

(b) The secretary of social and rehabilitation services shall evaluate drugs and drug classes for inclusion in the state medicaid preferred drug formulary based on safety, effectiveness and clinical outcomes of such treatments. In addition, the secretary shall evaluate drugs and drug classes to determine whether inclusion of such drugs or drug classes in a starter dose program would be clinically efficacious and cost effective. If the factors of safety, effectiveness and clinical outcomes among drugs being considered in the same class indicate no therapeutic advantage, then the secretary shall consider the cost effectiveness and the net economic impact of such drugs in making recommendations for inclusion in the state medicaid preferred drug formulary. Drugs which do not have a significant, clinically meaningful therapeutic advantage in terms of safety, effectiveness or clinical outcomes over other drugs in the same class which have been selected for the preferred drug formulary may be excluded from the preferred drug formulary and may be subject to prior authorization in accordance with state and federal law, except, prior to July 1, 2003, where a prescriber has personally written "dispense as written" or "D.A.W.", or has signed the prescriber's name on the "dispense as written" signature line in accordance with K.S.A. 65-1637, and amendments thereto.

(c) The secretary of social and rehabilitation services shall consider the net economic impact of drugs selected or excluded from the preferred formulary and may gather information on the costs of specific drugs, rebates or discounts pursuant to 42 U.S.C. 1396r-8, dispensing costs, dosing requirements and utilization of other drugs or other medicaid health care services.

(d) The secretary of social and rehabilitation services may accept all services, including, but not limited to, disease state management, associated with the delivery of pharmacy benefits under the state medicaid program having a determinable cost effect in addition to the medicaid prescription drug rebates required pursuant to 42 U.S.C. section 1396r-8.

(e) The state medicaid preferred drug formulary shall be submitted to the medicaid drug utilization review board for review and policy recommendations.

New Sec. 2. No requirements for prior authorization or other restrictions on medications used to treat mental illnesses such as schizophrenia, depression or bipolar disorder may be imposed on medicaid recipients. Medications that will be available under the state medicaid plan without restriction for persons with mental illnesses shall include atypical antipsychotic medications, conventional antipsychotic medications and other medications used for the treatment of mental illnesses.

New Sec. 3. A prescription medication prescribed for a medicaid recipient or a person who becomes eligible for medicaid assistance shall not be subject to any requirement for prior authorization under the state medicaid plan unless (a) such prescription, including all authorized refills, has expired, or (b) the practitioner who prescribed the medication for such recipient prescribes a different medication.

New Sec. 4. (a) The state medicaid plan shall include provisions for a program of differential dispensing fees for pharmacies that provide prescriptions for adult care homes under a unit dose system in accordance with rules and regulations of the state board of pharmacy and that participate in the return of unused medications program under the state medicaid plan.

(b) The state medicaid plan shall include provisions for differential ingredient cost reimbursement of generic and brand name pharmaceuticals. The secretary of social and rehabilitation services shall set the rates

for differential cost reimbursement of generic and brand name pharmaceuticals by rules and regulations.

New Sec. 5. (a) Except where a prescriber has personally written “dispense as written” or “D.A.W.,” or has signed the prescriber’s name on the “dispense as written” signature line in accordance with K.S.A. 65-1637 and amendments thereto, the secretary of social and rehabilitation services may limit reimbursement for a prescription under the medicaid program to the multisource generic equivalent drug.

(b) No pharmacist participating in the medical assistance program shall be required to dispense a prescription-only drug that will not be reimbursed by the medical assistance program.

Sec. 6. K.S.A. 39-7,118 is hereby amended to read as follows: 39-7,118. The secretary of social and rehabilitation services shall implement a drug utilization review program with the assistance of a medicaid drug utilization review board as provided in K.S.A. 39-7,119 and amendments thereto to assure the appropriate utilization of drugs by patients receiving medical assistance under the medicaid program. The drug utilization review program shall include:

(a) Monitoring of prescription information including overutilization and underutilization of prescription-only drugs;

(b) making periodic reports of findings and recommendations to the secretary of social and rehabilitation services and the United States department of health and human services regarding the activities of the board, drug utilization review programs, summary of interventions, assessments of education interventions and drug utilization review cost estimates;

(c) providing for prospective and retrospective drug utilization review, as specified in the federal omnibus budget reconciliation act of 1990 (public law 101-508);

(d) monitoring provider and recipient compliance with program objectives;

(e) providing educational information on state program objectives, directly or by contract, to private and public sector health care providers to improve prescribing and dispensing practices;

(f) reviewing the increasing costs of purchasing prescription drugs and making recommendations on cost containment; ~~and~~

(g) *reviewing profiles of medicaid beneficiaries who have multiple prescriptions above a level specified by the board; and*

(h) recommending any modifications or changes to the medicaid prescription drug program.

Sec. 7. K.S.A. 39-7,119 is hereby amended to read as follows: 39-7,119. (a) There is hereby created the medicaid drug utilization review board which shall be responsible for the implementation of retrospective and prospective drug utilization programs under the Kansas medicaid program.

(b) *Except as provided in subsection (i)*, the board shall consist of at least seven members appointed as follows:

(1) Two licensed physicians actively engaged in the practice of medicine, nominated by the Kansas medical society and appointed by the secretary of social and rehabilitation services from a list of four nominees;

(2) one licensed physician actively engaged in the practice of osteopathic medicine, nominated by the Kansas association of osteopathic medicine and appointed by the secretary of social and rehabilitation services from a list of four nominees;

(3) two licensed pharmacists actively engaged in the practice of pharmacy, nominated by the Kansas pharmacy association and appointed by the secretary of social and rehabilitation services from a list of four nominees;

(4) one person licensed as a pharmacist and actively engaged in academic pharmacy, appointed by the secretary of social and rehabilitation services from a list of four nominees provided by the university of Kansas; ~~and~~

(5) one licensed professional nurse actively engaged in long-term care nursing, nominated by the Kansas state nurses association and appointed by the secretary of social and rehabilitation services from a list of four nominees.

(c) The secretary of social and rehabilitation services may add two

additional members so long as no class of professional representatives exceeds 51% of the membership.

(d) The physician and pharmacist members shall have expertise in the clinically appropriate prescribing and dispensing of outpatient drugs.

(e) The appointments to the board shall be for *terms of three years*; ~~except that for the initial appointments to the board one physician and one pharmacist, as designated by the secretary of social and rehabilitation services, shall be appointed for two years. Thereafter, all appointments shall be for three years.~~ In making the appointments, the secretary of social and rehabilitation services shall provide for geographic balance in the representation on the board to the extent possible. *Subject to the provisions of subsection (i), members may be reappointed.*

(f) The board shall elect a chairperson from among board members who shall serve a one-year term. The chairperson may serve consecutive terms.

(g) The board, in accordance with K.S.A. 75-4319 and amendments thereto, may recess for a closed or executive meeting when it is considering matters relating to identifiable patients or providers.

(h) *All actions of the medicaid drug utilization review board shall be upon the affirmative vote of five members of the board and the vote of each member present when action was taken shall be recorded by roll call vote.*

(i) *Upon the expiration of the term of office of any member of the medicaid drug utilization review board on or after the effective date of this act and in any case of a vacancy existing in the membership position of any of member of the medicaid drug utilization review board on or after the effective date of this act, a successor shall be appointed by the secretary of social and rehabilitation services so that as the terms of members expire, or vacancies occur, members are appointed and the composition of the board is changed in accordance with the following and such appointment shall be made by the secretary in the following order of priority:*

(1) *One member shall be a licensed pharmacist who is actively performing or who has experience performing medicaid pharmacy services for a hospital and who is nominated by the Kansas hospital association and appointed by the secretary from a list of two or more nominees;*

(2) *one member shall be a licensed pharmacist who is actively performing or who has experience performing medicaid pharmacy services for a licensed adult care home and who is nominated by the state board of pharmacy and appointed by the secretary from a list of two or more nominees;*

(3) *one member shall be a licensed physician who is actively engaged in the general practice of allopathic medicine and who has practice experience with the state medicaid plan and who is nominated by the Kansas medical society and appointed by the secretary from a list of two or more nominees;*

(4) *one member shall be a licensed physician who is actively engaged in mental health practice providing care and treatment to persons with mental illness, who has practice experience with the state medicaid plan and who is nominated by the Kansas psychiatric society and appointed by the secretary from a list of two or more nominees;*

(5) *one member shall be a licensed physician who is the medical director of a nursing facility, who has practice experience with the state medicaid plan and who is nominated by the Kansas medical society and appointed by the secretary from a list of two or more nominees;*

(6) *one member shall be a licensed physician who is actively engaged in the general practice of osteopathic medicine, who has practice experience with the state medicaid plan and who is nominated by the Kansas association of osteopathic medicine and who is appointed by the secretary from a list of two or more nominees;*

(7) *one member shall be a licensed pharmacist who is actively engaged in retail pharmacy, who has practice experience with the state medicaid plan and who is nominated by the state board of pharmacy and appointed by the secretary from a list of two or more nominees;*

(8) *one member shall be a licensed pharmacist who is actively engaged in or who has experience in research pharmacy and who is nominated jointly by the Kansas task force for the pharmaceutical research and man-*

ufacturers association and the university of Kansas and appointed by the secretary from a list of two or more jointly nominated persons; and

(9) one member shall be a licensed advanced registered nurse practitioner or physician assistant actively engaged in the practice of providing the health care and treatment services such person is licensed to perform, who has practice experience with the state medicaid plan and who is nominated jointly by the Kansas state nurses' association and the Kansas academy of physician assistants and appointed by the secretary from a list of two or more jointly nominated persons.

Sec. 8. K.S.A. 39-7,120 is hereby amended to read as follows: 39-7,120. (a) The ~~department~~ secretary of social and rehabilitation services shall not restrict patient access to prescription-only drugs pursuant to a program of prior authorization or a restrictive formulary except by rules and regulations adopted in accordance with K.S.A. 77-415 *et seq.*, and *amendments thereto*. Prior to the promulgation of any such rules and regulations, the ~~department~~ secretary of social and rehabilitation services shall submit such proposed rules and regulations to the medicaid drug utilization review board for written comment. *The secretary of social and rehabilitation services may not implement permanent prior authorization until 30 days after receipt of comments by the drug utilization review board.*

(b) When considering recommendations from the medicaid drug utilization review board regarding the prior authorization of a drug, the secretary of social and rehabilitation services shall consider the net economic impact of such prior authorization, including, but not limited to, the costs of specific drugs, rebates or discounts pursuant to 42 U.S.C. 1396r-8, dispensing costs, dosing requirements and utilization of other drugs or other medicaid health care services which may be related to the prior authorization of such drug.

Sec. 9. K.S.A. 2001 Supp. 77-421 is hereby amended to read as follows: 77-421. (a) (1) Except as provided by subsection (a)(2) or subsection (a)(3), prior to the adoption of any permanent rule and regulation or any temporary rule and regulation which is required to be adopted as a temporary rule and regulation in order to comply with the requirements of the statute authorizing the same and after any such rule and regulation has been approved by the secretary of administration and the attorney general, the adopting state agency shall give at least 60 days' notice of its intended action in the Kansas register and to the secretary of state and to the joint committee on administrative rules and regulations established by K.S.A. 77-436, and amendments thereto. The notice shall be mailed to the secretary of state and to the chairperson of the joint committee and shall be published in the Kansas register. A complete copy of all proposed rules and regulations and the complete economic impact statement required by K.S.A. 77-416, and amendments thereto, shall accompany the notice sent to the secretary of state. The notice shall contain: (A) A summary of the substance of the proposed rules and regulations; (B) a summary of the economic impact statement indicating the estimated economic impact on governmental agencies or units, persons subject to the proposed rules and regulations and the general public; (C) a summary of the environmental benefit statement, if applicable, indicating the need for the proposed rules and regulations; (D) the address where a complete copy of the proposed rules and regulations, the complete economic impact statement, the environmental benefit statement, if applicable, required by K.S.A. 77-416, and amendments thereto, may be obtained; (E) the time and place of the public hearing to be held; the manner in which interested parties may present their views; and (F) a specific statement that the period of 60 days' notice constitutes a public comment period for the purpose of receiving written public comments on the proposed rules and regulations and the address where such comments may be submitted to the state agency. Publication of such notice in the Kansas register shall constitute notice to all parties affected by the rules and regulations.

(2) Prior to adopting any rule and regulation which establishes seasons and fixes bag, creel, possession, size or length limits for the taking or possession of wildlife and after such rule and regulation has been approved by the secretary of administration and the attorney general, the secretary of the department of wildlife and parks shall give at least 30

days' notice of its intended action in the Kansas register and to the secretary of state and to the joint committee on administrative rules and regulations created pursuant to K.S.A. 77-436, and amendments thereto. All other provisions of subsection (a)(1) shall apply to such rules and regulations, except that the statement required by subsection (a)(1)(E) shall state that the period of 30 days' notice constitutes a public comment period on such rules and regulations.

(3) *Prior to adopting any rule and regulation which establishes any permanent prior authorization on a prescription-only drug pursuant to K.S.A. 39-7,120, and amendments thereto, or which concerns coverage or reimbursement for pharmaceuticals under the pharmacy program of the state medicaid plan, and after such rule and regulation has been approved by the secretary of administration and the attorney general, the secretary of social and rehabilitation services shall give at least 30 days' notice of such secretary's intended action in the Kansas register and to the secretary of state and to the joint committee on administrative rules and regulations created pursuant to K.S.A. 77-436, and amendments thereto. All other provisions of subsection (a)(1) shall apply to such rules and regulations, except that the statement required by subsection (a)(1)(E) shall state that the period of 30 days' notice constitutes a public comment period on such rules and regulations.*

(b) On the date of the hearing, all interested parties shall be given reasonable opportunity to present their views or arguments on adoption of the rule and regulation, either orally or in writing. When requested to do so, the state agency shall prepare a concise statement of the principal reasons for adopting the rule and regulation or amendment thereto. Whenever a state agency is required by any other statute to give notice and hold a hearing before adopting, amending, reviving or revoking a rule and regulation, the state agency, in lieu of following the requirements or statutory procedure set out in such other law, may give notice and hold hearings on proposed rules and regulations in the manner prescribed by this section. Notwithstanding the other provisions of this section, the Kansas parole board and the secretary of corrections, may give notice or an opportunity to be heard to any inmate in the custody of the secretary of corrections with regard to the adoption of any rule and regulation, but the secretary shall not be required to give such notice or opportunity.

(c) When, pursuant to this or any other statute, a state agency holds a hearing on the adoption of a proposed rule and regulation, the agency shall cause written minutes or other records, including a record maintained on sound recording tape or on any electronically accessed media or any combination of written or electronically accessed media records of the hearing to be made. If the proposed rule and regulation is adopted and becomes effective, the state agency shall maintain, for not less than three years after its effective date, such minutes or other records, together with a list of all persons who appeared at the hearing and who they represented, any written testimony presented at the hearing and any written comments submitted during the public comment period.

(d) No rule and regulation shall be adopted by a board, commission, authority or other similar body except at a meeting which is open to the public and notwithstanding any other provision of law to the contrary, no rule and regulation shall be adopted by a board, commission, authority or other similar body unless it receives approval by roll call vote of a majority of the total membership thereof.

Sec. 10. K.S.A. 39-7,118, 39-7,119 and 39-7,120 and K.S.A. 2001 Supp. 77-421 are hereby repealed.

Sec. 11. This act shall take effect and be in force from and after its publication in the Kansas register.

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.