

SENATE BILL No. 234

By Committee on Public Health and Welfare

2-14

AN ACT requiring the registration of pharmacy benefits management companies; prescribing powers and duties of the commissioner of insurance with respect thereto.

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

Section 1. As used in this act:

(a) "Commissioner" means the commissioner of insurance;

(b) "claims processing" means the administrative services performed in connection with the processing and adjudication of claims for prescription drug or device benefits, including making payments to pharmacies;

(c) "department" means the insurance department;

(d) "enrollee" means any person enrolled in a health benefit plan who is entitled to receive pharmacy services under the health benefit plan;

(e) "health benefit plan" means any hospital or medical expense policy, health, hospital or medical service corporation contract, a plan provided by a municipal group-funded pool, a health maintenance organization contract offered by an employer, a plan provided by another benefit arrangement or any certificate issued under any such policies, contracts or plans. Such term does not include policies or certificates covering only accident, credit, dental, disability income, long-term care, hospital indemnity, medicare supplement, specified disease, vision care, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical-payment insurance, or insurance under which benefits are payable with or without regard to fault and which is statutorily required to be contained in any liability insurance policy or equivalent self-insurance;

(f) "pharmacist" shall have the meaning ascribed to such term by K.S.A. 65-1626, and amendments thereto;

(g) "pharmacy" shall have the meaning ascribed to such term by K.S.A. 65-1626, and amendments thereto;

(h) "pharmacy benefits management company" or "PBM" means any person who, on behalf of a health benefit plan: (1) Provides claims processing services or administers the prescription drug or device services authorized under the health benefit plan; or (2) provides claims processing services and administers the prescription drug or device services au-

1 thORIZED under a health benefit plan;

2 (i) “pharmacy services” shall mean and include drug therapy and
3 other patient care services provided by a pharmacist that is intended to
4 achieve outcomes related to the cure or prevention of a disease, elimi-
5 nation or reduction of a patient’s symptoms or arresting or slowing a
6 disease process; and

7 (j) “prescription drug or device services” means services provided
8 directly or indirectly by a PBM, whether in connection with or separate
9 from claims processing services, and includes but is not limited to: (1)
10 Negotiating rebates, discounts or other financial incentives and arrange-
11 ments with pharmaceutical companies; (2) disbursing or distributing such
12 rebates; (3) managing or participating in incentive programs or arrange-
13 ments for pharmacy services; (4) negotiating or entering into contractual
14 arrangements with health benefit plans and pharmacists or pharmacies;
15 (5) developing formularies; (6) designing prescription benefit programs;
16 or (7) engaging in other matters relating to the provision of or payment
17 for prescription benefit programs.

18 Sec. 2. (a) No person shall operate as a PBM in this state without
19 obtaining a certificate of authority from the commissioner. Any person
20 may apply to the commissioner to obtain a certificate of authority to op-
21 erate in this state as a PBM in compliance with this act. Application shall
22 be made on a form provided by the department, and a nonrefundable
23 application fee of \$500 shall accompany each application for a certificate
24 of authority.

25 (b) The application shall include the following:

26 (1) Copies of all organizational documents;

27 (2) the names, addresses and titles of individuals responsible for the
28 business and services provided, including all claims processing services
29 and prescription drug or device services;

30 (3) the names, addresses and titles of the members and officers of
31 the board of directors, board of trustees or other governing body or com-
32 mittee, or the partners or owners in case of a partnership or other entity
33 or association;

34 (4) a description of the claims processing services and prescription
35 drug or device services provided or to be provided;

36 (5) the name and address of the agent for service of process in this
37 state;

38 (6) financial statements for the current and the preceding year, show-
39 ing the assets, liabilities, direct or indirect income and any other sources
40 of financial support sufficient, as deemed by the commissioner, to show
41 financial stability and viability to meet its full obligations to enrollees;

42 (7) all incentive arrangements or programs such as rates, discounts,
43 disbursements or any other similar financial program or arrangement re-

1 lating to income or consideration received or negotiated, directly or in-
2 directly, with any pharmaceutical company, that relates to prescription
3 drug or device services, including at a minimum information on the for-
4 mula or other method for calculation and amount of the incentive ar-
5 rangements, rebates or other disbursements, the identity of the associated
6 drug or device, and the dates and amounts of such disbursements; and

7 (8) such other and further information as the commissioner may re-
8 quire as is reasonably related to the requirements of this act.

9 (c) The commissioner shall not issue or renew a certificate of au-
10 thority to do business in this state as a PBM unless and until the com-
11 missioner is satisfied that the person seeking such certificate of authority:

12 (1) Has paid all fees, taxes and charges required by law;

13 (2) is solvent and its financial condition, method of operation and
14 manner of doing business are such as to satisfy the commissioner that it
15 can meet its obligations to all enrollees, as well as other obligations im-
16 posed by or pursuant to this act; and

17 (3) has otherwise complied with all the requirements of this act.

18 (d) A PBM's certificate of authority shall be renewed annually, and
19 the application to renew the certificate of authority shall be on a form
20 provided by the department which shall require, to the extent necessary,
21 the same information required herein for the original application. The
22 renewal application shall be accompanied by a nonrefundable renewal
23 application fee of \$500.

24 Sec. 3. The commissioner shall notify any person filing an application
25 for a certificate of authority within 60 days of such filing if such application
26 is not complete or sufficient and the reasons therefor, or that payment of
27 the required fee has not been made or that the commissioner is not
28 satisfied with the sufficiency of the information supplied pursuant to the
29 provisions of section 2 and amendments thereto or that the person has
30 failed to demonstrate an ability to operate as a PBM in compliance with
31 this act.

32 Sec. 4. (a) The commissioner may suspend or revoke a certificate of
33 authority, if the commissioner finds:

34 (1) The PBM is operating materially in contravention of its basic or-
35 ganizational documents, its application or other information submitted as
36 a part of its application for a certificate of authority or for renewal of its
37 certificate of authority, or any condition imposed by the commissioner
38 with regard to the issuance or renewal of its certificate of authority;

39 (2) the PBM has failed to meet continuously the requirements for
40 issuance of a certificate of authority as set forth in this act;

41 (3) the PBM is unable or has failed to fulfill its obligations to enroll-
42 ees, to the extent that the continued operation of the PBM may be adverse
43 to the best interests of enrollees;

1 (4) the PBM has otherwise failed to comply substantially with this act
2 or any rules and regulations adopted by the commissioner pursuant to
3 this act; or

4 (5) the PBM has failed to comply substantially with any applicable
5 state or federal law or regulation.

6 (b) If the commissioner determines after notice and opportunity for
7 a hearing that any person has engaged or is engaging in any act or practice
8 constituting a violation of any provision of this act or any rule and regu-
9 lation or order thereunder, the commissioner, in the exercise of discretion
10 may order payment of a monetary penalty of not more than \$1,000 for
11 each and every act or violation, unless the person knew or reasonably
12 should have known such person was in violation of this act or any rule
13 and regulation or order thereunder, in which case the penalty shall be
14 not more than \$2,000 for each and every act or violation.

15 (c) If any person fails to file any report or other information with the
16 commissioner as required by this act or fails to respond to any proper
17 inquiry of the commissioner, the commissioner, after notice and oppor-
18 tunity for hearing, may impose a penalty of up to \$500 for each violation
19 or act, along with an additional penalty of up to \$100 for each week
20 thereafter that such report or other information is not provided to the
21 commissioner.

22 Sec. 5. (a) When the commissioner has reasonable cause to believe
23 that grounds for the denial, suspension or revocation of a certificate of
24 authority exists or that an administrative penalty should be imposed, the
25 commissioner shall notify the PBM or applicant, as the case may be, in
26 writing, stating the grounds upon which the commissioner believes the
27 certificate should be denied, suspended or revoked or the penalty levied.
28 The PBM or applicant, within 15 days from receipt of such notice, may
29 make written request to the commissioner for a hearing thereon. The
30 commissioner shall hear such party or parties within 20 days after receipt
31 of such request in accordance with the provisions of the Kansas admin-
32 istrative procedure act.

33 (b) If the certificate of authority of a PBM is revoked by the com-
34 missioner, the PBM shall proceed, immediately following the effective
35 date of the final order of revocation, to wind up its affairs, and it shall
36 conduct no further business, except as may be essential to the orderly
37 conclusion of its affairs. The commissioner may permit such further op-
38 eration of the PBM as the commissioner may find to be in the best interest
39 of enrollees, to the end that enrollees will be afforded the greatest prac-
40 tical opportunity to obtain prescription drug or device services. After one
41 year from the effective date of the revocation, the PBM may apply for
42 reinstatement and the issuance of a new certificate of authority.

43 Sec. 6. A PBM shall provide to each enrollee at the time of enroll-

1 ment a statement of the procedures for resolving enrollee grievances. The
2 statement shall include not less than the following provisions:

3 (a) The definition of a grievance, which shall include, at a minimum,
4 any complaint or concern an enrollee may have with the services provided
5 directly or indirectly by the PBM;

6 (b) how, where and to whom the enrollee should file such enrollee's
7 grievance; and

8 (c) that upon receiving notification of a grievance, the PBM shall:

9 (1) Acknowledge receipt of the grievance in writing within 10 working
10 days, unless it is resolved within that period of time;

11 (2) conduct a complete investigation of the grievance within 20 work-
12 ing days after receipt of a grievance, unless the investigation cannot be
13 completed within this period of time. If the investigation cannot be com-
14 pleted within 20 working days after receipt of a grievance, the PBM shall
15 notify the enrollee, stating the reasons why the investigation cannot be
16 completed within the time prescribed, and the PBM shall be allowed an
17 additional 30 working days within which to complete the investigation;

18 (3) have within five working days after the investigation is completed,
19 someone not involved in the circumstances giving rise to the grievance
20 or its investigation decide upon the appropriate resolution of the griev-
21 ance and notify the enrollee in writing of the decision of the PBM re-
22 garding the grievance and of any right to appeal. The notice shall explain
23 the resolution of the grievance in terms which are clear and specific; and

24 (4) if the PBM has established a grievance advisory panel, notify the
25 enrollee of the enrollee's right to request the grievance advisory panel to
26 review the decision of the PBM. The notice shall state how, where and
27 when the enrollee should make such enrollee's request for this review.

28 (d) A PBM shall provide the department with a copy of each griev-
29 ance filed by an enrollee. Annually, a PBM shall submit to the commis-
30 sioner a report as to the disposition of each grievance filed by enrollees
31 during the preceding year.

32 Sec. 7. The commissioner shall adopt such rules and regulations as
33 are necessary to carry out the provisions of this act.

34 Sec. 8. This act shall take effect and be in force from and after its
35 publication in the statute book.

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