

SENATE BILL No. 272

By Committee on Financial Institutions and Insurance

2-5

9 AN ACT concerning the Kansas pharmacy benefits managers act; estab-
10 lishing duties for pharmacy benefit managers; establishing penalties
11 for violations of the act; amending K.S.A. 2006 Supp. 40-3821, 40-
12 3822, 40-3824 and 40-3826 and repealing the existing sections.
13

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

15 New Section 1. Each pharmacy benefits manager owes a fiduciary
16 duty to a covered entity and shall discharge that duty in accordance with
17 both the laws of this state and federal law. A pharmacy benefits manager
18 shall: (a) Perform its duties with care, skill, prudence and diligence and
19 in accordance with the standards of conduct applicable to a fiduciary in
20 an enterprise of a like character and with like aims.

21 (b) Notify the covered entity in writing of any activity, policy or prac-
22 tice of the pharmacy benefits manager that directly or indirectly presents
23 any conflict of interest with the duties imposed by this section.

24 (c) (1) Provide to a covered entity all financial and utilization
25 information:

26 (A) Requested by the covered entity relating to the provision of ben-
27 efits to covered individuals through such covered entity; and

28 (B) all financial and utilization information relating to services to such
29 covered entity.

30 (2) Each pharmacy benefits manager providing information under
31 this paragraph may designate that material as confidential. Information
32 designated as confidential by a pharmacy benefits manager and provided
33 to a covered entity under this paragraph shall not be disclosed by the
34 covered entity to any person without the consent of the pharmacy benefits
35 manager, except that disclosure may be ordered by a court of this state
36 for good cause shown or made in a court filing under seal unless or until
37 otherwise ordered by a court. Nothing in this paragraph shall limit the
38 commissioner's authority under K.S.A. 40-2401 et seq. and amendments
39 thereto.

40 (d) Comply with the following requirements when dispensing a sub-
41 stitute prescription drug for a prescribed drug to a covered individual:

42 (1) If a pharmacy benefits manager makes a substitution in which the
43 substitute drug costs more than the prescribed drug, the pharmacy ben-

1 efits manager shall disclose to the covered entity the cost of both drugs
2 and any benefit or payment directly or indirectly accruing to the pharmacy
3 benefits manager as a result of the substitution.

4 (2) The pharmacy benefits manager shall transfer in full to the cov-
5 ered entity any benefit or payment received in any form by the pharmacy
6 benefits manager either as a result of:

7 (A) A prescription drug substitution under paragraph (2); or

8 (B) the pharmacy benefits manager's substituting a lower-priced ge-
9 neric and therapeutically equivalent drug for a higher-priced prescribed
10 drug.

11 (e) Each pharmacy benefits manager that derives any payment or
12 benefit for the dispensation of prescription drugs within the state based
13 on volume of sales for certain prescription drugs or classes or brands of
14 drugs within the state shall pass that payment or benefit on in full to the
15 covered entity.

16 (f) (1) Each pharmacy benefits manager shall disclose to the covered
17 entity all financial terms and arrangements for remuneration of any kind
18 that apply between the pharmacy benefits manager and any prescription
19 drug manufacturer or labeler, including, but not limited to, formulary
20 management and drug-switch programs, educational support, claims
21 processing and pharmacy network fees that are charged from retail phar-
22 macies and data sales fees.

23 (2) Each pharmacy benefits manager providing information under
24 this paragraph may designate that material as confidential. Information
25 designated as confidential by a pharmacy benefits manager and provided
26 to a covered entity under this paragraph shall not be disclosed by the
27 covered entity to any person without the consent of the pharmacy benefits
28 manager, except that disclosure may be ordered by a court of this state
29 for good cause shown or made in a court filing under seal unless or until
30 otherwise ordered by a court. Nothing in this paragraph shall limit the
31 commissioner's authority under K.S.A. 40-2401 et seq. and amendments
32 thereto.

33 New Sec. 2. Compliance with the requirements of section 1, and
34 amendments thereto, is required in all contracts for pharmacy benefits
35 management entered into in this state or by a covered entity in this state
36 which are executed or renewed on and after the effective date of this act.

37 Sec. 3. K.S.A. 2006 Supp. 40-3821 is hereby amended to read as
38 follows: 40-3821. (a) K.S.A. 2006 Supp. 40-3821 through 40-3828, *section*
39 *1 and section 2*, and amendments thereto, shall be known and may be
40 cited as the pharmacy benefits manager registration act.

41 (b) This act shall apply to any pharmacy benefits manager that pro-
42 vides claims processing services, other prescription drug or device serv-
43 ices, or both, to covered persons who are residents of this state.

1 ~~(c) This act shall not apply to any pharmacy benefits manager that~~
2 ~~holds a certificate of registration as an administrator pursuant to K.S.A.~~
3 ~~40-3810 and amendments thereto.~~

4 Sec. 4. K.S.A. 2006 Supp. 40-3822 is hereby amended to read as
5 follows: 40-3822. For purposes of this act: (a) “Commissioner” means the
6 commissioner of insurance as defined by K.S.A. 40-102 and amendments
7 thereto.

8 (b) (1) “Covered entity” means:

9 (A) A nonprofit hospital or medical service corporation, health in-
10 surer, health benefit plan or health maintenance organization;

11 (B) a health program administered by a department or the state in
12 the capacity of provider of health coverage; or

13 (C) an employer, labor union or other group of persons organized in
14 the state that provides health coverage to covered individuals who are
15 employed or reside in the state.

16 (2) Covered entity shall not include any:

17 (A) Self-funded plan that is exempt from state regulation pursuant to
18 ERISA;

19 (B) plan issued for coverage for federal employees; or

20 (C) health plan that provides coverage only for accidental injury,
21 specified disease, hospital indemnity, medicare supplement, disability in-
22 come, long-term care or other limited benefit health insurance policies
23 and contracts.

24 (c) “Covered person” means a member, policyholder, subscriber, en-
25 rollee, beneficiary, dependent or other individual participating in a health
26 benefit plan.

27 (d) *“Generic drug” means a chemically equivalent copy of a brand-*
28 *name drug with an expired patent.*

29 (e) *“Labeler” means an entity or person that receives prescription*
30 *drugs from a manufacturer or wholesaler and repackages those drugs for*
31 *later retail sale and that has a labeler code from the federal food and drug*
32 *administration.*

33 (f) “Pharmacy benefits management” means:

34 (1) Any of the following services provided with regard to the admin-
35 istration of the following pharmacy benefits:

36 (A) Mail service pharmacy;

37 (B) claims processing, retail network management and payment of
38 claims to pharmacies for prescription drugs dispensed to covered
39 individuals;

40 (C) clinical formulary development and management services;

41 (D) rebate contracting and administration;

42 (E) certain patient compliance, therapeutic intervention and generic
43 substitution programs; or

1 (F) disease management programs involving prescription drug utili-
2 zation; and

3 (2) (A) the procurement of prescription drugs by a prescription ben-
4 efits manager at a negotiated rate for dispensation to covered individuals
5 within this state; or

6 (B) the administration or management of prescription drug benefits
7 provided by a covered insurance entity for the benefit of covered
8 individuals.

9 ~~(e)~~ (g) “Pharmacy benefits manager” means a person, business or
10 other entity that performs pharmacy benefits management. Pharmacy
11 benefits manager includes any person or entity acting in a contractual or
12 employment relationship for a pharmacy benefits manager in the per-
13 formance of pharmacy benefits management for a covered entity.

14 The term “pharmacy benefits manager” shall not include a covered
15 insurance entity.

16 ~~(f)~~ (h) “Person” means an individual, partnership, corporation, or-
17 ganization or other business entity.

18 Sec. 5. K.S.A. 2006 Supp. 40-3824 is hereby amended to read as
19 follows: 40-3824. (a) Each pharmacy benefits manager registration shall
20 expire on March 31 each year and may be renewed annually on the re-
21 quest of the registrant. The application for renewal shall be submitted on
22 a form furnished by the commissioner and accompanied by a renewal fee
23 of \$140. The application for renewal shall be in such form and contain
24 such matters as the commissioner prescribes.

25 (b) If a registration renewal fee is not paid by the prescribed date,
26 the amount of the fee, plus a penalty fee of \$140 shall be paid. The
27 pharmacy benefits manager registration may be revoked or suspended by
28 the commissioner until the renewal fee and any penalty assessed has been
29 paid.

30 (c) Any person who performs or is performing any pharmacy benefits
31 management service on the effective date of this act must obtain a cer-
32 tificate of registration as a pharmacy benefits manager from the commis-
33 sioner within 90 days after the effective date of this act in order to con-
34 tinue to do business in Kansas.

35 (d) *No fees shall be required under this section for any pharmacy*
36 *benefits manager who is registered as an administrator in accordance with*
37 *the provisions of K.S.A. 40-3801 et seq., and amendments thereto, and*
38 *has paid the registration fee required by K.S.A. 40-3810 and amendments*
39 *thereto.*

40 Sec. 6. K.S.A. 2006 Supp. 40-3826 is hereby amended to read as
41 follows: 40-3826. (a) Any person who acts as a pharmacy benefits manager
42 without being registered as required by this act shall be subject to a fine
43 of \$500 for each violation.

1 ***(b) Except for a violation of subsection (a), any violation of this act***
2 ***shall also be considered an unfair or deceptive act or practice under K.S.A.***
3 ***40-2404, and amendments thereto, and subject to the penalties contained***
4 ***in K.S.A. 40-2401 et seq., and amendments thereto.***

5 Sec. 7. K.S.A. 2006 Supp. 40-3821, 40-3822, 40-3824 and 40-3826
6 are hereby repealed.

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