

SESSION OF 2006

SUPPLEMENTAL NOTE ON SENATE BILL NO. 547

As Amended by House Committee of the Whole

Brief*

SB 547, as amended, would enact new law, the Pharmacy Benefits Manager Registration Act, an act that would apply to any pharmacy benefits manager that provides claims processing services, other prescription drug or device services, or both, to covered persons who are residents of Kansas. The Act would not apply to any pharmacy benefits manager that holds a certificate of registration as an administrator pursuant to KSA 40-3810. That certificate also is issued by the Insurance Commissioner.

Registration requirements of the act include:

- No person is permitted to act or operate as a pharmacy benefits manager (PBM) without first obtaining a valid certificate of registration issued by the Insurance Commissioner. A pharmacy benefits manager would not include a covered insurance entity;
- Each person seeking a certificate is to file with the Commissioner an application upon a form furnished by the Commissioner. The form is to include the name, address, official position and professional qualifications of each individual who is responsible for the conduct of affairs of the pharmacy benefits manager, such as all members of the board of directors or other governing board or committee; the name and address of the applicant's agent for service of process in the state; and a nonrefundable application fee of \$140;
- Each benefits manager's registration is to expire on March 31 each year and may be annually renewed on request of the registrant. The renewal is to be submitted on a form furnished by the Commissioner with a \$140 renewal fee.
- If the renewal fee is not paid by the prescribed date, the amount of the fee, plus a penalty fee of \$140 is to be paid. The

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

registration may be revoked or suspended by the Commissioner until the renewal fee and any penalty has been paid; and

- Any person performing pharmacy benefits management service on the effective date of the act must obtain a certificate of registration from the Commissioner within 90 days after the effective date of the act, publication in the *Kansas Register*, in order to continue to do business in Kansas.

The bill also would define “pharmacy benefits management” as any of the following services provided through the administration of pharmacy benefits including: mail service pharmacy; claims processing, retail network management and payment of claims to pharmacies for prescription drugs dispensed to covered individuals; clinical formulary development and management services; rebate contracting and administration; certain patient compliance, therapeutic intervention and generic substitution programs; or disease management programs involving prescription drugs utilization; and the procurement of prescription drugs by a prescription benefits manager at a negotiated rate for dispensation to covered individuals within this state; or the administration or management of prescription drug benefits provided by a covered insurance entity for the benefit of covered individuals.

The bill also would provide that the Commissioner may adopt, amend and revoke rules and regulations governing the administration and enforcement of this act, in accordance with the Rules and Regulations Filing Act, including but not limited to the content of the application form; the content of any other form or report to implement this act; and such other rules and regulations as the Commissioner may deem necessary to carry out the provisions of this act.

Any person in violation of this act would be subject to a fine of \$500 for each violation.

The Insurance Commissioner is to remit all moneys received by or for the Commissioner under this act to the State Treasurer at least monthly. The amount is then to be deposited in the treasury and be credited to a new fund, the Pharmacy Benefits Manager Registration Fund.

Finally, the bill would provide that if any provision of this act or application of the act to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act

which can be given effect without the invalid provision or application, and to this end, the provisions of the act are severable. The act would become effective upon publication in the *Kansas Register*.

Background

SB 547 was introduced by the Senate Financial Institutions and Insurance Committee at the request of the Kansas Pharmacists Association whose representative indicated that the bill would serve as an addition to the Kansas Insurance Department's options for identifying out-of-state companies that are serving prescription drug beneficiaries throughout the State of Kansas. The bill was opposed by Express Scripts whose representative indicated concern about the necessity of the need for additional regulation or registration of PBMs by the state and the application of the Unfair Trade Practices Act to a pharmacy benefit manager and its activities.

The Senate Committee on Financial Institutions and Insurance amended the bill to remove the requirement that pharmacy benefit manager registrants be subject to provisions of the Unfair Trade Practices Act.

The Senate Committee of the Whole amendment changed the application fee, renewal fee, and renewal penalty fee amounts from \$500 to \$140. The \$500 penalty fee for violations of the act was not amended.

The House Committee of the Whole amended the application of the act of pharmacy benefits managers to provide that the Act would not apply to any pharmacy benefits manager that holds a certificate of registration as an administrator pursuant to KSA 40-3810 (third party administrator). The House Committee of the Whole also clarified the definition and services provided under "pharmacy benefits management." The bill also was amended to explicitly state that the term "pharmacy benefits manager" would not include a covered insurance entity. Finally, the Committee of the Whole removed a provision from the bill that required the Insurance Commissioner not issue a certificate of registration if certain factors are determined and a requirement that the pharmacy benefits manager notify the Commissioner in writing within 30 calendar days of any material change in its ownership.

The fiscal note prepared by the Division of the Budget on the introduced version of the bill indicates that passage of the bill would

have a minor impact on the Department of Insurance's budget and could be implemented within the agency's current staffing and operating expenditure levels. The Department's Accident and Health Division would process any submitted applications for a Pharmacy Benefit Certificate of Registration, process the required fees, and issue Certificates of Registration.