

SESSION OF 2023

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2259

As Amended by House Committee on Health
and Human Services

Brief*

HB 2259, as amended, would amend the Medicaid Drug Utilization Review Program regarding the requirement to have prior authorization for mental health medications. The bill would remove the requirement for the Medicaid Drug Utilization Review Board to review and approve any proposed policy, rule, or regulation regarding medications used to treat mental illness as submitted to the electronic pharmacy claims management system. The bill would remove the prior authorization requirement for authorized prescribers of mental health medications for Medicaid recipients. The bill would also eliminate the Mental Health Medication Advisory Committee (MHMAC) in its entirety.

Prior Authorization

The bill, as amended, would state that a prescriber shall not be required to obtain prior authorization for medications used for mental illness. Medications would include, but would not be limited to, conventional antipsychotic medications and atypical antipsychotic medications. The prior authorization for mental health medication would only be removed for persons who are Medicaid recipients.

*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>

Elimination of MHMAC

The bill would eliminate the MHMAC on July 1, 2023. [Note: Current law provides that the MHMAC is charged with providing recommendations to the drug utilization review board on medications used to treat mental illnesses.]

Definition of Prescriber

The bill, as amended, would provide that the term “prescriber” would have the same definition as used in the Regulation of Pharmacy Act as follows:

“Prescriber” means a practitioner or a mid-level practitioner.

“Practitioner” means a person licensed to practice medicine and surgery, dentist, podiatrist, veterinarian, optometrist, or scientific investigator or other person authorized by law to use a prescription-only drug in teaching or chemical analysis or to conduct research with respect to a prescription-only drug.

“Mid-level practitioner” means a certified nurse-midwife engaging in the independent practice of midwifery under the Independent Practice of Midwifery Act, an advanced practice registered nurse issued a license pursuant to KS. 65-1131, and amendments thereto, who has authority to prescribe drugs under KSA 65-1130, and amendments thereto, or a physician assistant licensed pursuant to the physician assistant licensure act who has authority to prescribe drugs pursuant to a written agreement with a supervising physician under KSA 65-28a08, and amendments thereto.

Background

The bill was introduced by the House Committee on Health and Human Services at the request of Representative

Bryce on behalf of the Association of Community Mental Health Centers of Kansas.

House Committee on Health and Human Services

In the House Committee on Health and Human Services hearing on February 14, 2023, **proponent** testimony was provided by two representatives of the Association of Community Mental Health Centers of Kansas and representatives of Kansas Mental Health Coalition and the National Alliance of Mental Illness Kansas, who stated the objective of the bill is to decrease the administrative burden on prescribers and decrease the negative clinical outcomes including delayed patient care pending the completion of the prior authorization process.

Written-only proponent testimony was submitted by a private citizen.

A representative of the Kansas Department of Health and Environment (KDHE) provided **opponent** testimony. The conferee stated the bill would impact monitoring of Medicaid-covered outpatient drug spend and recommendations on cost containment.

No other testimony was provided.

The House Committee amended the bill to allow any prescriber of mental health medications to be exempt from prior authorizations.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, KDHE states enactment of the bill would result in additional expenditures of at least \$7.1 million, including \$2.8 million from the State General Fund and \$4.3 million from federal funds, in FY 2024. KDHE

notes that the current policy to require the generic product of the brand reference product (when available) was used when determining the estimate, as the agency did not interpret the bill to prohibit this policy. If the policy was no longer allowed, the estimate would be significantly higher. KDHE also notes that the estimate does not reflect the elimination of patient safety edits that are also part of prior authorization, as the prescribing behavior of physicians cannot be predicted.

To determine the estimate, KDHE estimated that the impact is best represented by beneficiaries who had a least one denied claim for the specific drug requested and never received that specific requested drug. The average amount paid for each product was used to extrapolate monthly costs and then converted to annual costs. The current Wholesale Acquisition Cost was used for instances when there were no paid claims or insufficient claims. The estimates considered data over approximately four years. Drugs were included if they had Step Therapy, Preferred Drug List, or a supplemental rebate agreement. For Step Therapy, an appropriate step-through drug was assumed to have been used instead of the requested drug, and the net cost difference was used as the impact. For each non-preferred drug, it was assumed that the patient tried one or two preferred drugs and were adequately treated with a preferred agent. Two preferred agents from the corresponding class were selected and the average cost per claim was used to calculate the net cost difference. There were limitations for several drugs that were either not available or not utilized at all during the four years.

The Kansas Department for Aging and Disability Services, the Kansas State Board of Healing Arts, and the Kansas Board of Pharmacy report the bill would not result in a fiscal effect on the operations of any of the respective agencies. Any fiscal effect associated with the bill is not reflected in *The FY 2024 Governor's Budget Report*.

Medicaid; mental health; prior authorization; prescribers; kancare