

SENATE BILL No. 289

By Committee on Ways and Means

3-17

1 AN ACT concerning the state health care benefits program; relating to
2 pharmacy benefits managers; requirements and fiduciary duties; audit
3 of the pharmacy benefits management contract.
4

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

6 Section 1. (a) As used in this section:

7 (1) "Confidential information" means information provided by a
8 pharmacy benefits manager designated as confidential by such pharmacy
9 benefits manager and which may not be disclosed by the covered entity to
10 any unauthorized person without the consent of the pharmacy benefits
11 manager;

12 (2) "covered entity" means the division of health care finance of the
13 department of health and environment and the state health care benefits
14 program established pursuant to K.S.A. 75-6501 et seq., and amendments
15 thereto;

16 (3) "covered individual" means a member, employee or an
17 employee's dependent or plan participant of the state health care benefits
18 program established pursuant to K.S.A. 75-6501 et seq., and amendments
19 thereto;

20 (4) "generic drug" means a multisource generic drug as determined
21 by the pharmacy benefits manager using a combination of data provided
22 by a pricing source;

23 (5) "labeler" means an entity or person that receives prescription
24 drugs from a manufacturer or wholesaler and repackages such drugs for
25 later sale and that has a labeler code from the federal food and drug
26 administration under 21 C.F.R 207.20;

27 (6) "pharmacy benefits management" means: (A) The procurement of
28 prescription drugs at a negotiated rate for dispensation within the state to
29 covered individuals; (B) the administration or management of prescription
30 drug benefits provided by a covered entity for the benefit of covered
31 individuals; or (C) any of the following services provided with regard to
32 pharmacy benefits:

33 (i) Mail service pharmacy;

34 (ii) claims processing, retail network management and payment of
35 claims to pharmacies for prescription drugs dispensed to covered
36 individuals;

- 1 (iii) clinical formulary development and management services;
2 (iv) certain patient compliance, therapeutic intervention and generic
3 substitution programs; or
4 (v) disease management programs; and
5 (7) "pharmacy benefits manager" means an entity that performs
6 pharmacy benefits management, acts in the best interest of the covered
7 entity as it relates to pharmacy benefits management services and treats the
8 covered entity in a fiduciary manner. The term includes a person or entity
9 acting for a pharmacy benefits manager in a contractual or employment
10 relationship in the performance of pharmacy benefits management for the
11 covered entity and includes mail order and specialty pharmacies.
- 12 (b) Each pharmacy benefits manager owes a fiduciary duty to the
13 covered entity and shall discharge such duty in accordance with the
14 provisions of state and federal law. A pharmacy benefits manager shall act
15 in the best interest of the covered entity at all times while carrying out its
16 duties and obligations.
- 17 (c) Each pharmacy benefits manager shall perform its duties with
18 care, skill, prudence and diligence and in accordance with the standards of
19 conduct applicable to a fiduciary in an enterprise of like character and with
20 like aims.
- 21 (d) Each pharmacy benefits manager shall discharge its duties with
22 respect to the covered entity for the primary purpose of providing benefits
23 to covered individuals and defraying the reasonable expenses of
24 administrating the health plan.
- 25 (e) The pharmacy benefits manager shall not have any conflict of
26 interest, such as direct or indirect ownership of pharmacy providers. Each
27 pharmacy benefits manager shall notify the covered entity in writing of
28 any activity, policy or practice of the pharmacy benefits manager that
29 directly or indirectly presents any conflict of interest with the duties
30 imposed by this section.
- 31 (f) Each pharmacy benefits manager shall provide to a covered entity
32 all financial and utilization information requested by the covered entity
33 relating to the providing of benefits to covered individuals through such
34 covered entity and all financial and utilization information relating to
35 services to such covered entity. A pharmacy benefits manager providing
36 information under this subsection may designate that material as
37 confidential. Information designated as confidential by a pharmacy
38 benefits manager and provided to a covered entity under this subsection
39 shall not be disclosed by the covered entity to any person without the
40 consent of the pharmacy benefits manager. Disclosure, however, may be
41 ordered by a court of this state for good cause shown or made in a court
42 filing under seal unless or until otherwise ordered by the court. The
43 attorney general may investigate potential violations of this subsection and

1 may demand disclosure of information, but shall hold any proprietary
2 information confidential. Information designated as confidential under this
3 subsection shall not be subject to disclosure under the Kansas open records
4 act, K.S.A. 45-215 et seq., and amendments thereto. The provisions of this
5 subsection shall not be subject to the provisions of K.S.A. 45-229, and
6 amendments thereto.

7 (g) The pharmacy benefits manager may request to substitute a drug
8 costing more than the prescribed drug. The pharmacy benefits manager
9 shall disclose to the covered entity the cost of both drugs and any benefit
10 or payment directly or indirectly accruing to the pharmacy benefits
11 manager as a result of the substitution. The substitution must be made for
12 medical reasons that benefit the covered individual and benefit the covered
13 entity.

14 (h) The pharmacy benefits manager shall transfer in full to the
15 covered entity any benefit or payment in any form by the pharmacy
16 benefits manager either as a result of a prescription drug substitution under
17 this section or as a result of the pharmacy benefits manager's substitution
18 of a lower-priced generic and therapeutically equivalent drug for a higher-
19 priced drug.

20 (i) Each pharmacy benefits manager that derives any payment or
21 benefit for the dispensation of prescription drugs with the state based on
22 volume of sales for certain prescription drugs or classes or brands of drugs
23 within the state shall pass such payments or benefits on in full to the
24 covered entity.

25 (j) Each pharmacy benefits manager shall disclose to the covered
26 entity all financial terms and arrangements for remuneration of any kind
27 that apply between the pharmacy benefits manager and any prescription
28 drug manufacturer or labeler, including, but not limited to, formulary
29 management and drug switching programs, educational support, claims
30 processing and pharmacy network fees that are charged from the retail
31 pharmacies and data sales fees. Any pharmacy benefits manager providing
32 information under this subsection may designate that material as
33 confidential. Information designated as confidential under this subsection
34 shall not be disclosed by the covered entity to any person without the
35 consent of the pharmacy benefits manager. Disclosure, however, may be
36 ordered by a court of this state for good cause shown or made in a court
37 filing under seal unless or until otherwise ordered by the court. The
38 attorney general may investigate potential violations of this subsection and
39 may demand disclosure of information, but shall hold any proprietary
40 information confidential. Information designated as confidential under this
41 subsection shall not be subject to disclosure under the Kansas open records
42 act, K.S.A. 45-215 et seq., and amendments thereto. The provisions of this
43 subsection shall not be subject to the provisions of K.S.A. 45-229, and

1 amendments thereto.

2 (k) Each pharmacy benefits manager shall require a contracted
3 pharmacy to charge to a covered individual the pharmacy's usual and
4 customary price of filling the prescription or the contracted copayment,
5 whichever is less.

6 (l) Compliance with the requirements of this section is required in all
7 contracts for pharmacy benefits management entered into by the covered
8 entity.

9 (m) Each pharmacy benefits manager that violates this section may be
10 assessed a civil fine of not more than \$25,000 for each violation of this
11 section.

12 (n) The division of health care finance of the department of health
13 and environment shall develop appropriate audit procedures to determine
14 if the pharmacy benefits manager for the state health care benefits program
15 established pursuant to K.S.A. 75-6501 et seq., and amendments thereto,
16 and the pharmacy benefits management contract entered into on behalf of
17 the state health care benefits program complies with the requirements of
18 this section and any other law applicable to pharmacy benefits managers.

19 Sec. 2. This act shall take effect and be in force from and after its
20 publication in the statute book.