

**205.5512 Selection of and contract with third-party administrator as pharmacy benefit manager for Medicaid managed care organizations -- Requirements for department's contracts, procurement process, disclosure of information, and legislative committee review.**

- (1) By December 31, 2020, the department, in accordance with KRS Chapter 45A, shall select and contract with a third-party administrator to serve as the state pharmacy benefit manager for every managed care organization with whom the department contracts for the delivery of Medicaid services.
- (2) The state pharmacy benefit manager shall be responsible for administering all pharmacy benefits for Medicaid recipients enrolled in a managed care organization with whom the department contracts for the delivery of Medicaid services.
- (3) Each contract entered into or renewed by the department for the delivery of Medicaid services by a managed care organization after the cabinet has selected and contracted with the state pharmacy benefit manager shall require the managed care organization to contract with and utilize the state pharmacy benefit manager for the purpose of administering all pharmacy benefits for Medicaid recipients enrolled with the managed care organization.
- (4) As part of the procurement process to select the state pharmacy benefit manager, the department shall:
  - (a) Establish eligibility criteria that an entity shall meet in order to be eligible to become the state pharmacy benefit manager;
  - (b) Accept proposals from eligible entities seeking to become the state pharmacy benefit manager;
  - (c) Establish a master contract to be used by the department when contracting with the state pharmacy benefit manager, which shall:
    1. Establish the state pharmacy benefit manager's fiduciary duty owed to the department;
    2. Comply with the provisions of KRS 205.5514(4);
    3. Require:
      - a. The use of pass-through pricing; and
      - b. The state pharmacy benefit manager to use the preferred drug list, reimbursement methodologies, and dispensing fees established by the department pursuant to KRS 205.5514(1); and
    4. Prohibit:
      - a. The use of spread pricing; and
      - b. The state pharmacy benefit manager from:
        - i. Reducing payment for pharmacy or pharmacist services, directly or indirectly, under a reconciliation process to an effective rate of reimbursement. This prohibition shall include without limitation creating, imposing, or establishing direct or indirect remuneration fees, generic effective rates, dispensing effective rates, brand effective rates, any other

- effective rates, in-network fees, performance fees, pre-adjudication fees, post-adjudication fees, or any other mechanism that reduces, or aggregately reduces, payment for pharmacy or pharmacist services;
  - ii. Creating, modifying, implementing, or indirectly establishing any fee on a pharmacy, pharmacist, or a Medicaid recipient without first seeking and obtaining written approval from the department to do so;
  - iii. Requiring a Medicaid recipient to obtain a specialty drug from a specialty pharmacy owned by or otherwise associated with the state pharmacy benefit manager;
  - iv. Requiring or incentivizing a Medicaid recipient to use a pharmacy owned by or otherwise associated with the state pharmacy benefit manager; and
  - v. Requiring a Medicaid recipient to use a mail-order pharmaceutical distributor or mail-order pharmacy; and
- (d) Select and contract with a single third-party administrator to serve as the state pharmacy benefit manager to administer all pharmacy benefits for Medicaid recipients enrolled in a managed care organization with whom the department contracts for the delivery of Medicaid services.
- (5) As part of the procurement process to select the state pharmacy benefit manager, an entity seeking to become the state pharmacy benefit manager shall disclose the following information:
- (a) Any activity, policy, practice, contract including any national pharmacy contract, or agreement of the entity that may directly or indirectly present a conflict of interest in the entity's relationship with the department or a managed care organization with whom the department contracts for the delivery of Medicaid services;
  - (b) Any direct or indirect fees, charges, or any kind of assessments imposed by the pharmacy benefit manager on pharmacies licensed in Kentucky:
    - 1. With which the pharmacy benefit manager shares common ownership, management, or control;
    - 2. Which are owned, managed, or controlled by any of the pharmacy benefit manager's management companies, parent companies, subsidiary companies, jointly held companies, or companies otherwise affiliated by a common owner, manager, or holding company;
    - 3. Which share any common members on the board of directors; or
    - 4. Which share managers in common;
  - (c) Any direct or indirect fees, charges, or any kind of assessments imposed by the pharmacy benefit manager on pharmacies licensed in Kentucky which operate:
    - 1. More than ten (10) locations in the Commonwealth; or

2. Ten (10) or fewer locations in the Commonwealth; and
- (d) All common ownership, management, common members of a board of directors, shared managers, or control of a pharmacy benefit manager, or any of the pharmacy benefit manager's management companies, parent companies, subsidiary companies, jointly held companies, or companies otherwise affiliated by a common owner, manager, or holding company with:
1. A managed care organization and its affiliated companies;
  2. An entity that contracts on behalf of a pharmacy or any pharmacy services administration organization and its affiliated companies;
  3. A drug wholesaler or distributor and its affiliated companies;
  4. A third-party payor and its affiliated companies; and
  5. A pharmacy and its affiliated companies.
- (6) The contract between the department and the state pharmacy benefit manager shall be submitted to the Government Contract Review Committee of the Legislative Research Commission for comment and review.

**Effective:** March 27, 2020

**History:** Created 2020 Ky. Acts ch. 70, sec. 2, effective March 27, 2020.