

1 AN ACT relating to pharmacy reimbursement practices.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 304.9-440 is amended to read as follows:

- 4 (1) The commissioner may place on probation, suspend, or may impose conditions
5 upon the continuance of a license for not more than twenty-four (24) months,
6 revoke, or refuse to issue or renew any license issued under this subtitle or any
7 surplus lines broker, life settlement broker, or life settlement provider license, or
8 may levy a civil penalty in accordance with KRS 304.99-020, or any combination of
9 actions for any one (1) or more of the following causes:
- 10 (a) Providing incorrect, misleading, incomplete, or materially untrue information
11 in the license application;
- 12 (b) Violating any insurance laws, or violating any administrative regulations,
13 subpoena, or order of the commissioner or of another state's insurance
14 commissioner;
- 15 (c) Obtaining or attempting to obtain a license through misrepresentation or
16 fraud;
- 17 (d) Improperly withholding, misappropriating, or converting any moneys or
18 properties received in the course of doing insurance or the business of life
19 settlements;
- 20 (e) Intentionally misrepresenting the terms of an actual or proposed insurance
21 contract, life settlement contract, or application for insurance;
- 22 (f) Having been convicted of or having pled guilty or nolo contendere to any
23 felony;
- 24 (g) Having admitted or been found to have committed any unfair insurance trade
25 practice, insurance fraud, or fraudulent life settlement act;
- 26 (h) Using fraudulent, coercive, or dishonest practices; or demonstrating
27 incompetence, untrustworthiness, or financial irresponsibility; or being a

- 1 source of injury or loss to the public in the conduct of business in this state or
2 elsewhere;
- 3 (i) Having an insurance license, life settlement license, or its equivalent, denied,
4 suspended, or revoked in any other state, province, district, or territory;
- 5 (j) Surrendering or otherwise terminating any license issued by this state or by
6 any other jurisdiction, under threat of disciplinary action, denial, or refusal of
7 the issuance of or renewal of any other license issued by this state or by any
8 other jurisdiction; or revocation or suspension of any other license held by the
9 licensee issued by this state or by any other jurisdiction;
- 10 (k) Forging another's name to an application for insurance, to any other document
11 related to an insurance transaction, or to any document related to the business
12 of life settlements;
- 13 (l) Cheating, including improperly using notes or any other reference material to
14 complete an examination for license;
- 15 (m) Knowingly accepting insurance or life settlement business from an individual
16 or business entity who is not licensed, but who is required to be licensed under
17 this subtitle;
- 18 (n) Failing to comply with an administrative or court order imposing a child
19 support obligation;
- 20 (o) Failing to pay state income tax or to comply with any administrative or court
21 order directing payment of state income tax;
- 22 (p) Having been convicted of a misdemeanor for which restitution is ordered in
23 excess of three hundred dollars (\$300), or of any misdemeanor involving
24 dishonesty, breach of trust, or moral turpitude;
- 25 (q) Failing to no longer meet the requirements for initial licensure;
- 26 (r) If a life settlement provider, demonstrating a pattern of unreasonable
27 payments to owners or failing to honor contractual obligations set out in a life

1 settlement contract;

2 (s) Entering into any life settlement contract or using any form that has not been
3 approved pursuant to Subtitle 15 of this chapter;

4 (t) If a licensee, having assigned, transferred, or pledged a policy subject to a life
5 settlement contract to a person other than a life settlement provider licensed in
6 this state, an accredited investor or qualified institutional buyer as defined,
7 respectively, in Regulation D, Rule 501 or Rule 144a of the Federal Securities
8 Act of 1933, as amended, a financing entity, a special purpose entity, or a
9 related provider trust; ~~or~~

10 **(u) 1. If the licensee is a pharmacy benefit manager:**

11 **a. In the case of any invoice audit or other audit to determine**
12 **reimbursement eligibility of a pharmacy, refusing to accept as**
13 **valid any invoices from any wholesaler licensed by the Kentucky**
14 **Board of Pharmacy from which the pharmacy has purchased**
15 **prescription drugs; or**

16 **b. Requiring that any wholesaler licensed by the Kentucky Board of**
17 **Pharmacy hold any third-party accreditation or certification as:**

18 **i. A condition of reimbursement eligibility of a pharmacy; or**

19 **ii. A requirement to validate a pharmacy invoice.**

20 **2. Nothing in this paragraph shall be construed to exempt wholesalers**
21 **from compliance with the Drug Supply Chain Security Act, Pub. L.**
22 **No. 113-54, Title II; or**

23 ~~(v)~~~~(u)~~ Any other cause for which issuance of the license could have been
24 refused, had it then existed and been known to the commissioner.

25 (2) The license of a business entity may be suspended, revoked, or refused for any
26 cause relating to an individual designated in or registered under the license if the
27 commissioner finds that an individual licensee's violation was known or should

1 have been known by one (1) or more of the partners, officers, or managers acting on
2 behalf of the business entity and the violation was not reported to the Department of
3 Insurance nor corrective action taken.

4 (3) The license of a pharmacy benefit manager may, in the discretion of the
5 commissioner, be suspended, revoked, or refused for any cause enumerated in
6 subsection (1) of this section, and for violations of KRS 205.647, 304.9-053, 304.9-
7 054, 304.9-055, and 304.17A-162. The pharmacy benefit manager shall also be
8 subject to the same civil penalties under KRS 304.99-020 as an insurer.

9 (4) The applicant or licensee may make written request for a hearing in accordance with
10 KRS 304.2-310.

11 (5) The commissioner shall retain the authority to enforce the provisions and penalties
12 of this chapter against any individual or business entity who is under investigation
13 for or charged with a violation of this chapter, even if the individual's or business
14 entity's license has been surrendered or has lapsed by operation of law.

15 (6) The commissioner may suspend, revoke, or refuse to renew the license of a licensed
16 insurance agent operating as a life settlement broker, pursuant to KRS 304.15-700,
17 if the commissioner finds that such insurance agent has violated the provisions of
18 KRS 304.15-700 to 304.15-725.

19 (7) If the commissioner denies a license application or suspends, revokes, or refuses to
20 renew the license of a life settlement provider or life settlement broker, or suspends,
21 revokes, or refuses to renew the license of a licensed life insurance agent operating
22 as a life settlement broker pursuant to KRS 304.15-700, the commissioner shall
23 comply with the provisions of this section and KRS Chapter 13B.

24 ➔Section 2. KRS 205.647 is amended to read as follows:

25 (1) As used in this section, "pharmacy benefit manager" has the same meaning as in
26 KRS 304.9-020.

27 (2) A pharmacy benefit manager contracted with a managed care organization that

1 provides Medicaid benefits pursuant to this chapter shall comply with the
2 provisions of this section and KRS 304.9-053, 304.9-054, 304.9-055, Section 1 of
3 this Act, and 304.17A-162.

4 (3) KRS 304.17A-162(10), (11), (12), and (13) shall not apply to a pharmacy benefit
5 manager contracted directly with the cabinet to provide Medicaid benefits.

6 (4) A pharmacy benefit manager contracting with a managed care organization to
7 administer Medicaid benefits shall provide the following information to the
8 Department for Medicaid Services no later than August 15, 2018, and for each year
9 thereafter that the pharmacy benefit manager is contracted with a managed care
10 organization to administer Medicaid benefits:

11 (a) The total Medicaid dollars paid to the pharmacy benefit manager by a
12 managed care organization and the total amount of Medicaid dollars paid to
13 the pharmacy benefit manager by a managed care organization which were not
14 subsequently paid to a pharmacy licensed in Kentucky;

15 (b) 1. The average reimbursement, by drug ingredient cost, dispensing fee, and
16 any other fee paid by a pharmacy benefit manager to licensed
17 pharmacies with which the pharmacy benefit manager shares common
18 ownership, management, or control; or which are owned, managed, or
19 controlled by any of the pharmacy benefit manager's management
20 companies, parent companies, subsidiary companies, jointly held
21 companies, or companies otherwise affiliated by a common owner,
22 manager, or holding company; or which share any common members on
23 the board of directors; or which share managers in common.

24 2. For the purposes of this subsection, "average reimbursement" means a
25 statistical methodology selected by the Department for Medicaid
26 Services via any administrative regulations promulgated pursuant to this
27 section which shall include, at a minimum, the median and mean;

- 1 (c) The average reimbursement, by drug ingredient cost, dispensing fee, and any
2 other fee, paid by a pharmacy benefit manager to pharmacies licensed in
3 Kentucky which operate more than ten (10) locations;
- 4 (d) The average reimbursement by drug ingredient cost, dispensing fee, and any
5 other fee, paid by a pharmacy benefit manager to pharmacies licensed in
6 Kentucky which operate ten (10) or fewer locations;
- 7 (e) Any direct or indirect fees, charges, or any kind of assessments imposed by
8 the pharmacy benefit manager on pharmacies licensed in Kentucky with
9 which the pharmacy benefit manager shares common ownership,
10 management, or control; or which are owned, managed, or controlled by any
11 of the pharmacy benefit manager's management companies, parent companies,
12 subsidiary companies, jointly held companies, or companies otherwise
13 affiliated by a common owner, manager, or holding company; or which share
14 any common members on the board of directors; or which share managers in
15 common;
- 16 (f) Any direct or indirect fees, charges, or any kind of assessments imposed by
17 the pharmacy benefit manager on pharmacies licensed in Kentucky which
18 operate more than ten (10) locations;
- 19 (g) Any direct or indirect fees, charges, or any kind of assessments imposed by
20 the pharmacy benefit manager on pharmacies licensed in Kentucky which
21 operate ten (10) or fewer locations; and
- 22 (h) All common ownership, management, common members of a board of
23 directors, shared managers, or control of a pharmacy benefit manager, or any
24 of the pharmacy benefit manager's management companies, parent companies,
25 subsidiary companies, jointly held companies, or companies otherwise
26 affiliated by a common owner, manager, or holding company with any
27 managed care organization contracted to administer Kentucky Medicaid

1 benefits, any entity which contracts on behalf of a pharmacy, or any pharmacy
2 services administration organization; or any common ownership,
3 management, common members of a board of directors, shared managers, or
4 control of a pharmacy services administration organization that is contracted
5 with a pharmacy benefit manager, with any drug wholesaler or distributor or
6 any of the pharmacy services administration organization's management
7 companies, parent companies, subsidiary companies, jointly held companies,
8 or companies otherwise affiliated by a common owner, common members of a
9 board of directors, manager, or holding company.

10 (5) All information provided by a pharmacy benefit manager pursuant to subsection (4)
11 of this section shall reflect data for the most recent full calendar year and shall be
12 divided by month. This information shall be managed by the Department for
13 Medicaid Services in accordance with applicable law and shall be exempt from
14 KRS 61.870 to 61.884 in accordance with KRS 61.878(1)(c).

15 (6) Any contract entered into or renewed for the delivery of Medicaid services by a
16 managed care organization on or after July 1, 2018, shall comply with the following
17 requirements:

18 (a) The Department for Medicaid Services shall set, create, or approve, and may
19 change at any time for any reason, reimbursement rates between a pharmacy
20 benefit manager and a contracted pharmacy, or an entity which contracts on
21 behalf of a pharmacy. Reimbursement rates shall include dispensing fees
22 which take into account applicable guidance by the Center for Medicare and
23 Medicaid Services. A pharmacy benefit manager shall notify the Department
24 for Medicaid Services thirty (30) days in advance of any proposed change of
25 over five percent (5%) in the product reimbursement rates for a pharmacy
26 licensed in Kentucky. The Department for Medicaid Services may disallow
27 the change within thirty (30) days of this notification;

- 1 (b) All laws and administrative regulations promulgated by the Department for
2 Medicaid Services, including but not limited to the regulation of maximum
3 allowable costs;
- 4 (c) The Department for Medicaid Services shall approve any contract between the
5 managed care organization and a pharmacy benefit manager;
- 6 (d) The Department for Medicaid Services shall approve any contract, any change
7 in the terms of a contract, or suspension or termination of a contract between a
8 pharmacy benefit manager contracted with a managed care organization to
9 administer Medicaid benefits and an entity which contracts on behalf of a
10 pharmacy, or any contract or any change in the terms of a contract, or any
11 suspension or termination of a contract between a pharmacy benefit manager
12 and a pharmacy or pharmacist; and
- 13 (e) Any fee established, modified, or implemented directly or indirectly by a
14 managed care organization, pharmacy benefit manager, or entity which
15 contracts on behalf of a pharmacy that is directly or indirectly charged to,
16 passed onto, or required to be paid by a pharmacy services administration
17 organization, pharmacy, or Medicaid recipient shall be submitted to the
18 Department for Medicaid Services for approval. This paragraph shall not
19 apply to any membership fee or service fee established, modified, or
20 implemented by a pharmacy services administration organization on a
21 pharmacy licensed in Kentucky that is not directly or indirectly related to
22 product reimbursement.
- 23 (7) The Department for Medicaid Services may promulgate administrative regulations
24 pursuant to KRS Chapter 13A as necessary to implement and administer its
25 responsibilities under this section. These administrative regulations may include but
26 are not limited to the assessment of fines, penalties, or sanctions for noncompliance.
- 27 (8) The Department for Medicaid Services may consider any information ascertained

1 pursuant to this section in the setting, creation, or approval of reimbursement rates
2 used by a pharmacy benefit manager or an entity which contracts on behalf of a
3 pharmacy.

4 **(9) (a) The Department for Medicaid Services shall not:**

5 **1. Approve any contract subject to this section that:**

6 **a. In the case of any invoice audit or other audit to determine**
7 **reimbursement eligibility of a pharmacy, refuses to accept as**
8 **valid any invoices from any wholesaler licensed by the Kentucky**
9 **Board of Pharmacy from which the pharmacy has purchased**
10 **prescription drugs; or**

11 **b. Requires that any wholesaler licensed by the Kentucky Board of**
12 **Pharmacy hold any third-party accreditation or certification as:**

13 **i. A condition of reimbursement eligibility of a pharmacy; or**

14 **ii. A requirement to validate a pharmacy invoice; or**

15 **2. If administering medical assistance reimbursement of pharmacies**
16 **directly, impose any of the requirements under subparagraph 1. of this**
17 **paragraph.**

18 **(b) Nothing in this subsection shall be construed to exempt wholesalers from**
19 **compliance with the Drug Supply Chain Security Act, Pub. L. No. 113-54,**
20 **Title II.**