

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;

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

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

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

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

19 **b. A requirement to validate a pharmacy invoice; or**

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

22 (2) The license of a business entity may be suspended, revoked, or refused for any
23 cause relating to an individual designated in or registered under the license if the
24 commissioner finds that an individual licensee's violation was known or should
25 have been known by one (1) or more of the partners, officers, or managers acting on
26 behalf of the business entity and the violation was not reported to the Department of
27 Insurance nor corrective action taken.

- 1 (3) The license of a pharmacy benefit manager may, in the discretion of the
2 commissioner, be suspended, revoked, or refused for any cause enumerated in
3 subsection (1) of this section, and for violations of KRS 205.647, 304.9-053, 304.9-
4 054, 304.9-055, and 304.17A-162. The pharmacy benefit manager shall also be
5 subject to the same civil penalties under KRS 304.99-020 as an insurer.
- 6 (4) The applicant or licensee may make written request for a hearing in accordance with
7 KRS 304.2-310.
- 8 (5) The commissioner shall retain the authority to enforce the provisions and penalties
9 of this chapter against any individual or business entity who is under investigation
10 for or charged with a violation of this chapter, even if the individual's or business
11 entity's license has been surrendered or has lapsed by operation of law.
- 12 (6) The commissioner may suspend, revoke, or refuse to renew the license of a licensed
13 insurance agent operating as a life settlement broker, pursuant to KRS 304.15-700,
14 if the commissioner finds that such insurance agent has violated the provisions of
15 KRS 304.15-700 to 304.15-725.
- 16 (7) If the commissioner denies a license application or suspends, revokes, or refuses to
17 renew the license of a life settlement provider or life settlement broker, or suspends,
18 revokes, or refuses to renew the license of a licensed life insurance agent operating
19 as a life settlement broker pursuant to KRS 304.15-700, the commissioner shall
20 comply with the provisions of this section and KRS Chapter 13B.
- 21 ➔Section 2. KRS 205.647 is amended to read as follows:
- 22 (1) As used in this section, "pharmacy benefit manager" has the same meaning as in
23 KRS 304.9-020.
- 24 (2) A pharmacy benefit manager contracted with a managed care organization that
25 provides Medicaid benefits pursuant to this chapter shall comply with the
26 provisions of this section and KRS 304.9-053, 304.9-054, 304.9-055, **Section 1 of**
27 **this Act,** and 304.17A-162.

- 1 (3) KRS 304.17A-162(10), (11), (12), and (13) shall not apply to a pharmacy benefit
2 manager contracted directly with the cabinet to provide Medicaid benefits.
- 3 (4) A pharmacy benefit manager contracting with a managed care organization to
4 administer Medicaid benefits shall provide the following information to the
5 Department for Medicaid Services no later than August 15, 2018, and for each year
6 thereafter that the pharmacy benefit manager is contracted with a managed care
7 organization to administer Medicaid benefits:
- 8 (a) The total Medicaid dollars paid to the pharmacy benefit manager by a
9 managed care organization and the total amount of Medicaid dollars paid to
10 the pharmacy benefit manager by a managed care organization which were not
11 subsequently paid to a pharmacy licensed in Kentucky;
- 12 (b) 1. The average reimbursement, by drug ingredient cost, dispensing fee, and
13 any other fee paid by a pharmacy benefit manager to licensed
14 pharmacies with which the pharmacy benefit manager shares common
15 ownership, management, or control; or which are owned, managed, or
16 controlled by any of the pharmacy benefit manager's management
17 companies, parent companies, subsidiary companies, jointly held
18 companies, or companies otherwise affiliated by a common owner,
19 manager, or holding company; or which share any common members on
20 the board of directors; or which share managers in common.
- 21 2. For the purposes of this subsection, "average reimbursement" means a
22 statistical methodology selected by the Department for Medicaid
23 Services via any administrative regulations promulgated pursuant to this
24 section which shall include, at a minimum, the median and mean;
- 25 (c) The average reimbursement, by drug ingredient cost, dispensing fee, and any
26 other fee, paid by a pharmacy benefit manager to pharmacies licensed in
27 Kentucky which operate more than ten (10) locations;

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

1 control of a pharmacy services administration organization that is contracted
2 with a pharmacy benefit manager, with any drug wholesaler or distributor or
3 any of the pharmacy services administration organization's management
4 companies, parent companies, subsidiary companies, jointly held companies,
5 or companies otherwise affiliated by a common owner, common members of a
6 board of directors, manager, or holding company.

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

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

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

25 (b) All laws and administrative regulations promulgated by the Department for
26 Medicaid Services, including but not limited to the regulation of maximum
27 allowable costs;

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

- 1 **(9) The Department for Medicaid Services shall not:**
- 2 **(a) Approve any contract subject to this section that:**
- 3 **1. In the case of any invoice audit or other audit to determine**
- 4 **reimbursement eligibility of a pharmacy, refuses to accept as valid any**
- 5 **invoices from any wholesaler licensed by the Kentucky Board of**
- 6 **Pharmacy from which the pharmacy has purchased prescription**
- 7 **drugs; or**
- 8 **2. Requires that any wholesaler licensed by the Kentucky Board of**
- 9 **Pharmacy hold any third-party accreditation or certification as:**
- 10 **a. A condition of reimbursement eligibility of a pharmacy; or**
- 11 **b. A requirement to validate a pharmacy invoice; or**
- 12 **(b) If administering medical assistance reimbursement of pharmacies directly,**
- 13 **impose any of the requirements under paragraph (a) of this subsection.**