

1 AN ACT relating to outpatient pharmacy benefits in the Medicaid program and
2 declaring an emergency.

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

4 ➔SECTION 1. A NEW SECTION OF KRS 205.510 TO 205.560 IS CREATED
5 TO READ AS FOLLOWS:

6 *As used in Sections 1 to 6 of this Act, unless context otherwise requires:*

7 *(1) "Department" means the Department for Medicaid Services;*

8 *(2) "Managed care organization" has the same meaning as in KRS 205.532;*

9 *(3) "Pharmacy benefit manager" has the same meaning as in KRS 304.9-020;*

10 *(4) "Spread pricing" means any technique by which a pharmacy benefit manager or*
11 *other administrator of pharmacy benefits charges or claims an amount from an*
12 *insurer or managed care organization for pharmacy or pharmacist services,*
13 *including payment for a prescription drug, that is different than the amount the*
14 *pharmacy benefit manager or other administrator pays to the pharmacy or*
15 *pharmacist that provided the services; and*

16 *(5) "State pharmacy benefit manager" means the pharmacy benefit manager*
17 *contracted by the department, pursuant to Section 2 of this Act, to administer*
18 *pharmacy benefits for all Medicaid recipients enrolled in a managed care*
19 *organization in the Commonwealth.*

20 ➔SECTION 2. A NEW SECTION OF KRS 205.510 TO 205.560 IS CREATED
21 TO READ AS FOLLOWS:

22 *(1) By December 31, 2020, the department, in accordance with KRS Chapter 45A,*
23 *shall select and contract with a third-party administrator to serve as the state*
24 *pharmacy benefit manager for every managed care organization with whom the*
25 *department contracts for the delivery of Medicaid services.*

26 *(2) The state pharmacy benefit manager shall be responsible for administering all*
27 *pharmacy benefits for Medicaid recipients enrolled in a managed care*

1 organization with whom the department contracts for the delivery of Medicaid
2 services.

3 (3) Each contract entered into or renewed by the department for the delivery of
4 Medicaid services by a managed care organization after the cabinet has selected
5 and contracted with the state pharmacy benefit manager shall require the
6 managed care organization to contract with and utilize the state pharmacy benefit
7 manager for the purpose of administering all pharmacy benefits for Medicaid
8 recipients enrolled with the managed care organization.

9 (4) As part of the procurement process to select the state pharmacy benefit manager,
10 the department shall:

11 (a) Establish eligibility criteria that an entity shall meet in order to be eligible to
12 become the state pharmacy benefit manager;

13 (b) Accept proposals from eligible entities seeking to become the state
14 pharmacy benefit manager;

15 (c) Establish a master contract to be used by the department when contracting
16 with the state pharmacy benefit manager, which shall:

17 1. Establish the state pharmacy benefit manager's fiduciary duty owed to
18 the department;

19 2. Comply with the provisions of subsection (4) of Section 3 of this Act;

20 3. Require:

21 a. The use of pass-through pricing; and

22 b. The state pharmacy benefit manager to use the preferred drug
23 list, reimbursement methodologies, and dispensing fees
24 established by the department pursuant to subsection (1) of
25 Section 3 of this Act; and

26 4. Prohibit:

27 a. The use of spread pricing; and

- 1 **b. The state pharmacy benefit manager from:**
- 2 **i. Reducing payment for pharmacy or pharmacist services,**
- 3 **directly or indirectly, under a reconciliation process to an**
- 4 **effective rate of reimbursement. This prohibition shall**
- 5 **include without limitation creating, imposing, or**
- 6 **establishing direct or indirect remuneration fees, generic**
- 7 **effective rates, dispensing effective rates, brand effective**
- 8 **rates, any other effective rates, in-network fees,**
- 9 **performance fees, pre-adjudication fees, post-adjudication**
- 10 **fees, or any other mechanism that reduces, or aggregately**
- 11 **reduces, payment for pharmacy or pharmacist services;**
- 12 **ii. Creating, modifying, implementing, or indirectly**
- 13 **establishing any fee on a pharmacy, pharmacist, or a**
- 14 **Medicaid recipient without first seeking and obtaining**
- 15 **written approval from the department to do so;**
- 16 **iii. Requiring a Medicaid recipient to obtain a specialty drug**
- 17 **from a specialty pharmacy owned by or otherwise**
- 18 **associated with the state pharmacy benefit manager;**
- 19 **iv. Requiring or incentivizing a Medicaid recipient to use a**
- 20 **pharmacy owned by or otherwise associated with the state**
- 21 **pharmacy benefit manager; and**
- 22 **v. Requiring a Medicaid recipient to use a mail-order**
- 23 **pharmaceutical distributor or mail-order pharmacy; and**
- 24 **(d) Select and contract with a single third-party administrator to serve as the**
- 25 **state pharmacy benefit manager to administer all pharmacy benefits for**
- 26 **Medicaid recipients enrolled in a managed care organization with whom**
- 27 **the department contracts for the delivery of Medicaid services.**

1 (5) As part of the procurement process to select the state pharmacy benefit manager,
2 an entity seeking to become the state pharmacy benefit manager shall disclose the
3 following information:

4 (a) Any activity, policy, practice, contract including any national pharmacy
5 contract, or agreement of the entity that may directly or indirectly present a
6 conflict of interest in the entity's relationship with the department or a
7 managed care organization with whom the department contracts for the
8 delivery of Medicaid services;

9 (b) Any direct or indirect fees, charges, or any kind of assessments imposed by
10 the pharmacy benefit manager on pharmacies licensed in Kentucky:

11 1. With which the pharmacy benefit manager shares common
12 ownership, management, or control;

13 2. Which are owned, managed, or controlled by any of the pharmacy
14 benefit manager's management companies, parent companies,
15 subsidiary companies, jointly held companies, or companies otherwise
16 affiliated by a common owner, manager, or holding company;

17 3. Which share any common members on the board of directors; or

18 4. Which share managers in common;

19 (c) 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:

22 1. More than ten (10) locations in the Commonwealth;

23 2. Ten (10) or fewer locations in the Commonwealth; and

24 (d) All common ownership, management, common members of a board of
25 directors, shared managers, or control of a pharmacy benefit manager, or
26 any of the pharmacy benefit manager's management companies, parent
27 companies, subsidiary companies, jointly held companies, or companies

1 otherwise affiliated by a common owner, manager, or holding company
 2 with:

- 3 1. A managed care organization and its affiliated companies;
- 4 2. An entity that contracts on behalf of a pharmacy or any pharmacy
 5 services administration organization and its affiliated companies;
- 6 3. A drug wholesaler or distributor and its affiliated companies;
- 7 4. A third-party payor and its affiliated companies; and
- 8 5. A pharmacy and its affiliated companies.

9 (6) The contract between the department and the state pharmacy benefit manager
 10 shall be submitted to the Government Contract Review Committee of the
 11 Legislative Research Commission for comment and review.

12 ➔SECTION 3. A NEW SECTION OF KRS 205.510 TO 205.560 IS CREATED
 13 TO READ AS FOLLOWS:

14 (1) The department shall:

15 (a) Establish a single preferred drug list to be used by the state pharmacy
 16 benefit manager for each managed care organization with whom the
 17 department contracts for the delivery of Medicaid services; and

18 (b) Promulgate administrative regulations that establish:

- 19 1. Reimbursement methodologies; and
- 20 2. Dispensing fees which may take into account applicable guidance by
 21 the Centers for Medicare and Medicaid Services and which may, to
 22 the extent permitted under federal law, vary by pharmacy type,
 23 including rural and independently owned pharmacies, chain
 24 pharmacies, and pharmacies owned or contracted by a health care
 25 facility that is registered as a covered entity pursuant to 42 U.S.C. sec.
 26 256b.

27 Reimbursement methodologies established by administrative regulations

1 shall not discriminate against pharmacies owned or contracted by a health
2 care facility that is registered as a covered entity pursuant to 42 U.S.C. sec.
3 256b, to the extent allowable by the Centers for Medicare and Medicaid
4 Services.

5 (2) The reimbursement methodologies and dispensing fees established by the
6 department pursuant to subsection (1) of this section shall be used by the state
7 pharmacy benefit manager for each managed care organization with whom the
8 department contracts for the delivery of Medicaid services.

9 (3) The state pharmacy benefit manager shall administer, adjudicate, and reimburse
10 pharmacy benefit claims submitted by pharmacies to the state pharmacy benefit
11 manager in accordance with:

12 (a) The terms of any contract between a health care facility that is registered as
13 a covered entity pursuant to 42 U.S.C. sec. 256b and a Medicaid managed
14 care organization;

15 (b) The terms and conditions of the contract between the state pharmacy
16 benefit manager and the Commonwealth; and

17 (c) The reimbursement methodologies and dispensing fees established by the
18 department, pursuant to subsection (1) of this section.

19 (4) The following shall apply to the state pharmacy benefit manager, the contract
20 between the state pharmacy benefit manager and the department, and, where
21 applicable, any contract between the state pharmacy benefit manager and a
22 pharmacy:

23 (a) The department shall be responsible for reviewing and shall approve or
24 deny:

25 1. Any contract, any change in the terms of a contract, or suspension or
26 termination of a contract between the state pharmacy benefit manager
27 and a pharmacy licensed under KRS Chapter 315; and

1 2. Any contract, any change in the terms of a contract, or suspension or
2 termination of a contract between the state pharmacy benefit manager
3 and an entity that contacts on behalf of a pharmacy licensed under
4 KRS Chapter 315;

5 (b) The state pharmacy benefit manager shall comply with KRS 304.9-053,
6 304.9-054, and 304.9-055;

7 (c) After December 1, 2020, the state pharmacy benefit manager shall not enter
8 into, renew, extend, or amend a national contract with any pharmacy that is
9 inconsistent with:

10 1. The terms and conditions of the contract between the state pharmacy
11 benefit manager and the Commonwealth; or

12 2. The reimbursement methodologies and dispensing fees established by
13 the department, pursuant to subsection (1) of this section;

14 (d) 1. When creating or establishing a pharmacy network for a managed
15 care organization with whom the department contracts for the delivery
16 of Medicaid services, the state pharmacy benefit manager shall not
17 discriminate against any pharmacy or pharmacist that is:

18 a. Located within the geographic coverage area of the managed
19 care organization; and

20 b. Willing to agree to or accept reasonable terms and conditions
21 established by the state pharmacy benefit manager, or other
22 administrator for network participation, including obtaining
23 preferred participation status.

24 2. Discrimination prohibited by this paragraph shall include denying a
25 pharmacy the opportunity to participate in a pharmacy network at
26 preferred participation status; and

27 (e) A contract between the state pharmacy benefit manager and a pharmacy

1 shall not release the state pharmacy benefit manager from the obligation to
2 make any payments owed to the pharmacy for services rendered prior to the
3 termination of the contract between the state pharmacy benefit manager
4 and the pharmacy or removal of the pharmacy from the pharmacy network.

5 ➔SECTION 4. A NEW SECTION OF KRS 205.510 TO 205.560 IS CREATED
6 TO READ AS FOLLOWS:

7 All payment arrangements between the department, managed care organizations, and
8 the state pharmacy benefit manager shall comply with state and federal statutes,
9 regulations adopted by the Centers for Medicare and Medicaid Services, and any other
10 agreement between the department and the Centers for Medicare and Medicaid
11 Services. The department may change a payment arrangement in order to comply with
12 state and federal statutes, regulations adopted by the Centers for Medicare and
13 Medicaid services, or any other agreement between the department and the Centers for
14 Medicare and Medicaid services.

15 ➔SECTION 5. A NEW SECTION OF KRS 205.510 to 205.560 IS CREATED
16 TO READ AS FOLLOWS:

17 (1) Notwithstanding any provisions of law to the contrary, beginning on the effective
18 date of this Act and continuing until December 31, 2020, a pharmacy benefit
19 manager contracted with a managed care organization to administer Medicaid
20 benefits shall not:

21 (a) Adjust, modify, change, or amend reimbursement methodologies,
22 dispensing fees, and any other fees paid by the pharmacy benefit manager
23 to pharmacies licensed in the Commonwealth;

24 (b) Create, modify, implement, or indirectly establish any fee on a pharmacy,
25 pharmacist, or a Medicaid recipient in the Commonwealth; and

26 (c) Make any adjustments, modifications, or changes to a pharmacy network
27 for the managed care organization with whom the pharmacy benefit

1 manager has contracted to administer Medicaid benefits.

2 (2) Notwithstanding any provisions of law to the contrary, beginning on the effective
 3 date of this Act and continuing until December 31, 2020, a pharmacy benefit
 4 manager contracted with a managed care organization to administer Medicaid
 5 benefits shall:

6 (a) Administer, adjudicate, and, when appropriate, reimburse any pharmacy
 7 benefit claim submitted to the managed care organization prior to the
 8 termination of the contract between the pharmacy benefit manager and the
 9 managed care organization in accordance with the contract between the
 10 pharmacy benefit manager and the managed care organization; and

11 (b) Not be released from its obligation to make any payments owed to a
 12 pharmacy licensed in the Commonwealth for pharmacy services rendered
 13 prior to the termination of the contract between the pharmacy benefit
 14 manager and the managed care organization.

15 (3) The department shall impose a fine of twenty-five thousand dollars (\$25,000) per
 16 day per separate violation on a pharmacy benefit manager who violates
 17 subsection (1) or (2) of this section.

18 ➔SECTION 6. A NEW SECTION OF KRS 205.510 to 205.560 IS CREATED
 19 TO READ AS FOLLOWS:

20 By December 1, 2020, and at least annually thereafter, the Technical Advisory
 21 Committee on Pharmacy established in Section 7 of this Act shall make
 22 recommendations to the department regarding the reimbursement methodologies and
 23 dispensing fees used by the state pharmacy benefit manager pursuant to Section 3 of
 24 this Act.

25 ➔Section 7. KRS 205.590 is amended to read as follows:

26 (1) The following technical advisory committees shall be established for the purpose of
 27 acting in an advisory capacity to the council with respect to the administration of the

- 1 medical assistance program and in performing the function of peer review:
- 2 (a) A Technical Advisory Committee on Physician Services consisting of five (5)
3 physicians appointed by the council of the Kentucky State Medical
4 Association;
- 5 (b) A Technical Advisory Committee on Hospital Care consisting of five (5)
6 hospital administrators appointed by the board of trustees of the Kentucky
7 Hospital Association;
- 8 (c) A Technical Advisory Committee on Dental Care consisting of five (5)
9 dentists appointed by the Kentucky Dental Association;
- 10 (d) A Technical Advisory Committee on Nursing Service consisting of five (5)
11 nurses appointed by the board of directors of the Kentucky State Association
12 of Registered Nurses;
- 13 (e) A Technical Advisory Committee on Nursing Home Care consisting of six (6)
14 members of which five (5) members shall be appointed by the Kentucky
15 Association of Health Care Facilities, and one (1) member shall be appointed
16 by the Kentucky Association of Nonprofit Homes and Services for the Aging,
17 Inc.;
- 18 (f) A Technical Advisory Committee on Optometric Care consisting of five (5)
19 members appointed by the Kentucky Optometric Association;
- 20 (g) A Technical Advisory Committee on Podiatric Care consisting of five (5)
21 podiatrists appointed by the Kentucky Podiatry Association;
- 22 (h) A Technical Advisory Committee on Primary Care consisting of five (5)
23 primary care providers, two (2) of whom shall represent licensed health
24 maintenance organizations, appointed by the Governor, until such time as an
25 association of primary care providers is established, whereafter the association
26 shall appoint the members;
- 27 (i) A Technical Advisory Committee on Home Health Care consisting of five (5)

1 members appointed by the board of directors of the Kentucky Home Health
2 Association;

3 (j) A Technical Advisory Committee on Consumer Rights and Client Needs
4 consisting of five (5) members, with one (1) member to be appointed by each
5 of the following organizations: the Kentucky Combined Committee on Aging,
6 the Kentucky Legal Services Corporation, the Arc of Kentucky, the
7 Department of Public Advocacy, and the National Association of Social
8 Workers-Kentucky Chapter;

9 (k) A Technical Advisory Committee on Behavioral Health consisting of six (6)
10 members, with one (1) member to be appointed by each of the following
11 organizations: the Kentucky Mental Health Coalition, the Kentucky
12 Association of Regional Programs, the National Alliance on Mental Illness
13 (NAMI) Kentucky, a statewide mental health consumer organization, the
14 People Advocating Recovery (PAR), and the Kentucky Brain Injury Alliance;

15 (l) A Technical Advisory Committee on Children's Health consisting of ten (10)
16 members, with one (1) member to be appointed by each of the following
17 organizations: the Kentucky Chapter of the American Academy of Pediatrics,
18 the Kentucky PTA, the Kentucky Psychological Association, the Kentucky
19 School Nurses Association, the Kentucky Association for Early Childhood
20 Education, the Family Resource and Youth Services Coalition of Kentucky,
21 the Kentucky Youth Advocates, the Kentucky Association of Hospice and
22 Palliative Care, a parent of a child enrolled in Medicaid or the Kentucky
23 Children's Health Insurance Program appointed by the Kentucky Head Start
24 Association, and a pediatric dentist appointed by the Kentucky Dental
25 Association;

26 (m) A Technical Advisory Committee on Intellectual and Developmental
27 Disabilities consisting of nine (9) members, one (1) of whom shall be a

1 consumer who participates in a nonresidential community Medicaid waiver
 2 program, one (1) of whom shall be a consumer who participates in a
 3 residential community Medicaid waiver program, one (1) of whom shall be a
 4 consumer representative of a family member who participates in a community
 5 Medicaid waiver program, and one (1) of whom shall be a consumer
 6 representative of a family member who resides in an ICF/ID facility that
 7 accepts Medicaid payments, all of whom shall be appointed by the Governor;
 8 one (1) member shall be appointed by the Arc of Kentucky; one (1) member
 9 shall be appointed by the Commonwealth Council on Developmental
 10 Disabilities; one (1) member shall be appointed by the Kentucky Association
 11 of Homes and Services for the Aging; and two (2) members shall be appointed
 12 by the Kentucky Association of Private Providers, one (1) of whom shall be a
 13 nonprofit provider and one (1) of whom shall be a for-profit provider;

14 (n) A Technical Advisory Committee on Therapy Services consisting of six (6)
 15 members, two (2) of whom shall be occupational therapists and shall be
 16 appointed by the Kentucky Occupational Therapists Association, two (2) of
 17 whom shall be physical therapists and shall be appointed by the Kentucky
 18 Physical Therapy Association, and two (2) of whom shall be speech therapists
 19 and shall be appointed by the Kentucky Speech-Language-Hearing
 20 Association; and

21 (o) A Technical Advisory Committee on Pharmacy consisting of seven (7)~~five~~
 22 ~~(5)~~ members, two (2) of whom shall be Kentucky licensed pharmacists who
 23 own fewer than ten (10) pharmacies in the Commonwealth and shall be
 24 appointed by the Kentucky Independent Pharmacy Alliance, two (2) of
 25 whom shall be Kentucky licensed pharmacists and shall be appointed by the
 26 Kentucky Pharmacy Association, and one (1) member to be appointed by
 27 each of the following organizations: the Kentucky Hospital Association, the

1 *Kentucky Primary Care Association, and the National Association of Chain*
 2 *Drug Stores* ~~[pharmacists appointed by the Kentucky Pharmacists~~
 3 ~~Association].~~

4 (2) The members of the technical advisory committees shall serve until their successors
 5 are appointed and qualified.

6 (3) Each appointive member of a committee shall serve without compensation but shall
 7 be entitled to reimbursement for actual and necessary expenses in carrying out his
 8 duties with reimbursement for expenses being made in accordance with state
 9 regulations relating to travel reimbursement.

10 ➔ Section 8. KRS 205.647 is amended to read as follows:

11 (1) As used in this section, "*state* pharmacy benefit manager" *means a pharmacy*
 12 *benefit manager, [has the same meaning] as defined in KRS 304.9-020, contracted*
 13 *by the department, pursuant to Section 2 of this Act, to administer pharmacy*
 14 *benefits for all Medicaid recipients enrolled in a managed care organization in*
 15 *the Commonwealth.*

16 (2) ~~[A pharmacy benefit manager contracted with a managed care organization that~~
 17 ~~provides Medicaid benefits pursuant to this chapter shall comply with the~~
 18 ~~provisions of this section and KRS 304.9-053, 304.9-054, 304.9-055, and 304.17A-~~
 19 ~~162.~~

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

22 (4) ~~[The state[A] pharmacy benefit manager [contracting with a managed care~~
 23 ~~organization to administer Medicaid benefits]shall, *upon receipt of a request from*~~
 24 *the Department for Medicaid Services,* provide the following information to the
 25 Department for Medicaid Services *in a form and manner prescribed by the*
 26 *Department for Medicaid Services* ~~[no later than August 15, 2018, and for each year~~
 27 ~~thereafter that the pharmacy benefit manager is contracted with a managed care~~

1 ~~organization to administer Medicaid benefits]:~~

2 (a) The total Medicaid dollars paid to the state pharmacy benefit manager by a
3 managed care organization and the total amount of Medicaid dollars paid to
4 the pharmacy benefit manager by a managed care organization which were not
5 subsequently paid to a pharmacy licensed in Kentucky;

6 (b) 1. The average reimbursement, by drug ingredient cost, dispensing fee, and
7 any other fee paid by the state~~[a]~~ pharmacy benefit manager to licensed
8 pharmacies with which the state pharmacy benefit manager shares
9 common ownership, management, or control; or which are owned,
10 managed, or controlled by any of the state pharmacy benefit manager's
11 management companies, parent companies, subsidiary companies,
12 jointly held companies, or companies otherwise affiliated by a common
13 owner, manager, or holding company; or which share any common
14 members on the board of directors; or which share managers in
15 common.

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

20 (c) The average reimbursement, by drug ingredient cost, dispensing fee, and any
21 other fee, paid by the state~~[a]~~ pharmacy benefit manager to pharmacies
22 licensed in Kentucky which operate more than ten (10) locations;

23 (d) The average reimbursement by drug ingredient cost, dispensing fee, and any
24 other fee, paid by the state~~[a]~~ pharmacy benefit manager to pharmacies
25 licensed in Kentucky which operate ten (10) or fewer locations; and

26 (e) ~~[Any direct or indirect fees, charges, or any kind of assessments imposed by~~
27 ~~the pharmacy benefit manager on pharmacies licensed in Kentucky with~~

1 ~~which the pharmacy benefit manager shares common ownership,~~
2 ~~management, or control; or which are owned, managed, or controlled by any~~
3 ~~of the pharmacy benefit manager's management companies, parent companies,~~
4 ~~subsidiary companies, jointly held companies, or companies otherwise~~
5 ~~affiliated by a common owner, manager, or holding company; or which share~~
6 ~~any common members on the board of directors; or which share managers in~~
7 ~~common;~~

8 ~~(f) Any direct or indirect fees, charges, or any kind of assessments imposed by~~
9 ~~the pharmacy benefit manager on pharmacies licensed in Kentucky which~~
10 ~~operate more than ten (10) locations;~~

11 ~~(g) Any direct or indirect fees, charges, or any kind of assessments imposed by~~
12 ~~the pharmacy benefit manager on pharmacies licensed in Kentucky which~~
13 ~~operate ten (10) or fewer locations; and~~

14 ~~(h)~~ } All common ownership, management, common members of a board of
15 directors, shared managers, or control of the state~~[a]~~ pharmacy benefit
16 manager, or any of the state pharmacy benefit manager's management
17 companies, parent companies, subsidiary companies, jointly held companies,
18 or companies otherwise affiliated by a common owner, manager, or holding
19 company with any managed care organization contracted to administer
20 Kentucky Medicaid benefits, any entity which contracts on behalf of a
21 pharmacy, or any pharmacy services administration organization; or any
22 common ownership, management, common members of a board of directors,
23 shared managers, or control of a pharmacy services administration
24 organization that is contracted with the state~~[a]~~ pharmacy benefit manager,
25 with any drug wholesaler or distributor or any of the pharmacy services
26 administration organization's management companies, parent companies,
27 subsidiary companies, jointly held companies, or companies otherwise

1 affiliated by a common owner, common members of a board of directors,
2 manager, or holding company.

3 ~~(3)~~~~(5)~~ All information provided by the state~~[a]~~ pharmacy benefit manager pursuant
4 to subsection ~~(2)~~~~(4)~~ of this section shall reflect data for the most recent full
5 calendar year and shall be divided by month. This information shall be managed by
6 the Department for Medicaid Services in accordance with applicable law and shall
7 be exempt from KRS 61.870 to 61.884 in accordance with KRS 61.878(1)(c).

8 ~~(4)~~~~(6)~~ Any contract entered into or renewed for the delivery of Medicaid services by
9 a managed care organization on or after the effective date of this Act~~[July 1, 2018]~~,
10 shall comply with the following requirements:

11 (a) The Department for Medicaid Services shall, in accordance with Section 3 of
12 this Act, set or~~[,]~~ create,~~[or approve,]~~ and may change at any time for any
13 reason, reimbursement rates between the state~~[a]~~ pharmacy benefit manager
14 and a contracted pharmacy, or an entity which contracts on behalf of a
15 pharmacy. Reimbursement rates shall include dispensing fees which take into
16 account applicable guidance by the Center for Medicare and Medicaid
17 Services~~[. A pharmacy benefit manager shall notify the Department for~~
18 ~~Medicaid Services thirty (30) days in advance of any proposed change of over~~
19 ~~five percent (5%) in the product reimbursement rates for a pharmacy licensed~~
20 ~~in Kentucky. The Department for Medicaid Services may disallow the change~~
21 ~~within thirty (30) days of this notification];~~

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

25 (c) The Department for Medicaid Services shall review and may approve or deny
26 any contract between the managed care organization and the state~~[a]~~
27 pharmacy benefit manager;

1 (d) ~~[The Department for Medicaid Services shall approve any contract, any~~
2 ~~change in the terms of a contract, or suspension or termination of a contract~~
3 ~~between a pharmacy benefit manager contracted with a managed care~~
4 ~~organization to administer Medicaid benefits and an entity which contracts on~~
5 ~~behalf of a pharmacy, or any contract or any change in the terms of a contract,~~
6 ~~or any suspension or termination of a contract between a pharmacy benefit~~
7 ~~manager and a pharmacy or pharmacist; and~~

8 (e) ~~—~~Any fee established, modified, or implemented directly or indirectly by a
9 managed care organization, *the state* pharmacy benefit manager, or entity
10 which contracts on behalf of a pharmacy that is directly or indirectly charged
11 to, passed onto, or required to be paid by a pharmacy services administration
12 organization, pharmacy, or Medicaid recipient shall be submitted to the
13 Department for Medicaid Services for approval. This paragraph shall not
14 apply to any membership fee or service fee established, modified, or
15 implemented by a pharmacy services administration organization on a
16 pharmacy licensed in Kentucky that is not directly or indirectly related to
17 product reimbursement; *and*

18 (e) *The provisions of Sections 2 and 3 of this Act.*

19 ~~(5)~~~~(7)~~ The Department for Medicaid Services may promulgate administrative
20 regulations pursuant to KRS Chapter 13A as necessary to implement and administer
21 its responsibilities under this section. These administrative regulations may include
22 but are not limited to the assessment of fines, penalties, or sanctions for
23 noncompliance.

24 ~~(6)~~~~(8)~~ The Department for Medicaid Services may consider any information
25 ascertained pursuant to this section in the setting, creation, or approval of
26 reimbursement rates used by a pharmacy benefit manager or an entity which
27 contracts on behalf of a pharmacy.

1 ➔Section 9. If the Cabinet for Health and Family Services determines that a
2 waiver or any other authorization from a federal agency is necessary prior to the
3 implementation of any provision of this Act, the Cabinet for Health and Family Services
4 shall, within 90 days of the effective date of this Act, request the waiver or authorization
5 and may delay implementing any provision deemed to require a waiver or authorization
6 only until the waiver or authorization is granted.

7 ➔Section 10. Whereas there is urgent need to improve the administration and
8 provision of pharmacy benefits for Medicaid recipients in the Commonwealth, an
9 emergency is declared to exist, and this Act takes effect upon its passage and approval by
10 the Governor or upon its otherwise becoming a law.