

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 this Sections 1 to 5 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; and*

10 *(4) "State pharmacy benefit manager" means the pharmacy benefit manager*
11 *contracted by the department, pursuant to Section 2 of this Act, to administer*
12 *pharmacy benefits for all Medicaid recipients enrolled in a managed care*
13 *organization in the Commonwealth.*

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

16 *(1) (a) By December 31, 2020, the department, in accordance with KRS Chapter*
17 *45, shall select and contract with a third-party administrator to serve as the*
18 *state pharmacy benefit manager used by the department and every managed*
19 *care organization with whom the department contracts for the delivery of*
20 *Medicaid services.*

21 *(b) As part of the procurement process to select the state pharmacy benefit*
22 *manager, the department shall:*

23 *1. Establish eligibility criteria that an entity shall meet in order to be*
24 *eligible to become the state pharmacy benefit manager;*

25 *2. Accept proposals from eligible entities seeking to become the state*
26 *pharmacy benefit manager;*

27 *3. Establish a master contract to be used by the department when*

- 1 contracting with the state pharmacy benefit manager, which shall:
- 2 a. Prohibit the state pharmacy benefit manager from requiring a
- 3 Medicaid recipient to obtain a specialty drug from a specialty
- 4 pharmacy owned by or otherwise associated with the state
- 5 pharmacy benefit manager;
- 6 b. Require the use of pass-through pricing;
- 7 c. Prohibit spread pricing; and
- 8 d. Prohibit in-network fees, direct and indirect remuneration fees,
- 9 pre-adjudication fees, post-adjudication fees, and any effective
- 10 rates; and
- 11 4. Select and contract with a single state pharmacy benefit manager to
- 12 administer all pharmacy benefits for Medicaid recipients enrolled in a
- 13 managed care organization in the Commonwealth.
- 14 (c) An entity seeking to become the state pharmacy benefit manager shall, as
- 15 part of the procurement process, disclose the following information to the
- 16 department:
- 17 1. Any activity, policy, practice, contract, or agreement of the entity that
- 18 may directly or indirectly present a conflict of interest in the entity's
- 19 relationship with the department or a managed care organization;
- 20 2. Any direct or indirect fees, charges, or any kind of assessments
- 21 imposed by the pharmacy benefit manager on pharmacies licensed in
- 22 Kentucky with which the pharmacy benefit manager shares common
- 23 ownership, management, or control; or which are owned, managed, or
- 24 controlled by any of the pharmacy benefit manager's management
- 25 companies, parent companies, subsidiary companies, jointly held
- 26 companies, or companies otherwise affiliated by a common owner,
- 27 manager, or holding company; or which share any common members

- 1 on the board of directors; or which share managers in common;
- 2 3. Any direct or indirect fees, charges, or any kind of assessments
- 3 imposed by the pharmacy benefit manager on pharmacies licensed in
- 4 Kentucky which operate more than ten (10) locations;
- 5 4. Any direct or indirect fees, charges, or any kind of assessments
- 6 imposed by the pharmacy benefit manager on pharmacies licensed in
- 7 Kentucky which operate ten (10) or fewer locations; and
- 8 5. All common ownership, management, common members of a board of
- 9 directors, shared managers, or control of a pharmacy benefit
- 10 manager, or any of the pharmacy benefit manager's management
- 11 companies, parent companies, subsidiary companies, jointly held
- 12 companies, or companies otherwise affiliated by a common owner,
- 13 manager, or holding company with:
- 14 a. A managed care organization and its affiliated companies;
- 15 b. An entity that contracts on behalf of a pharmacy or any
- 16 pharmacy services administration organization and its affiliated
- 17 companies;
- 18 c. A drug wholesaler or distributor and its affiliated companies;
- 19 d. A third-party payer and its affiliated companies; and
- 20 e. A pharmacy and its affiliated companies.
- 21 (2) The state pharmacy benefit manager shall be responsible for administering all
- 22 pharmacy benefits for Medicaid recipients enrolled in a managed care
- 23 organization in the Commonwealth.
- 24 (3) Each contract entered into or renewed by the department for the delivery of
- 25 Medicaid services by a managed care organization after the cabinet has selected
- 26 and contracted with the state pharmacy benefit manager pursuant to subsection
- 27 (1) of this section shall require the managed care organization to contract with

1 and utilize the state pharmacy benefit manager, selected and contracted by the
2 department pursuant to subsection (1) of this section, for the purpose of
3 administering all pharmacy benefits for Medicaid recipients enrolled in a
4 managed care organization in the Commonwealth.

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

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

10 (1) The department shall establish a single preferred drug list to be used by the state
11 pharmacy benefit manager for each managed care organization with whom the
12 department contracts for the delivery of Medicaid services.

13 (2) (a) The department shall promulgate administrative regulations, to be used by
14 the state pharmacy benefit manager for each managed care organization,
15 that establish:

16 1. Reimbursement methodologies; and

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

23 Reimbursement methodologies established by administrative regulations
24 shall not discriminate against pharmacies owned or contracted by a health
25 care facility that is registered as a covered entity pursuant to 42 U.S.C. sec.
26 256b, to the extent allowable by the Centers for Medicare and Medicaid
27 Services.

1 **(b) The reimbursement methodologies and dispensing fees established by the**
2 **department pursuant to paragraph (a) of this subsection shall be used by the**
3 **state pharmacy benefit manager for each managed care organization.**

4 **(3) (a) The state pharmacy benefit manager shall administer, adjudicate, and**
5 **reimburse pharmacy benefit claims submitted to a Medicaid managed care**
6 **organization with whom the department contracts for the delivery of**
7 **Medicaid services in accordance with:**

8 **1. The terms of any contract between a health care facility that is**
9 **registered as a covered entity pursuant to 42 U.S.C. sec. 256b and a**
10 **Medicaid managed care organization; and**

11 **2. The terms and conditions of the contract between the state pharmacy**
12 **benefit manager and the Commonwealth.**

13 **(b) The state pharmacy benefit manager shall utilize the reimbursement**
14 **methodologies and dispensing fees established by the department, pursuant**
15 **to subsection (2) of this section.**

16 **(4) The following shall apply to the state pharmacy benefit manager, the contract**
17 **between the state pharmacy benefit manager and the department, and, where**
18 **applicable, any contract between the state pharmacy benefit manager and a**
19 **pharmacy:**

20 **(a) The department shall approve any contract between the state pharmacy**
21 **benefit manager and a pharmacy licensed under KRS Chapter 315;**

22 **(b) The state pharmacy benefit manager shall not change the terms of a**
23 **contract between the state pharmacy benefit manager and a pharmacy**
24 **without first obtaining written approval from the department to do so;**

25 **(c) The state pharmacy benefit manager shall not create, modify, implement, or**
26 **indirectly establish any fee on a pharmacy, pharmacist, or a Medicaid**
27 **recipient without first obtaining written approval from the department to do**

1 so; and

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

6 a. Located within the geographic coverage area of the managed
 7 care organization; and

8 b. Willing to agree to or accept reasonable terms and conditions
 9 established by the state pharmacy benefit manager, or other
 10 administrator for network participation, including obtaining
 11 preferred participation status.

12 2. Discrimination prohibited by this paragraph shall include denying a
 13 pharmacy the opportunity to participate in a pharmacy network at
 14 preferred participation status.

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

17 The state pharmacy benefit manager shall comply with KRS 304.9-053, 304.9-054,
 18 304.9-055, and 304.17A-162, except that KRS 304.17A-162(10), (11), (12), and (13)
 19 shall not apply to the state pharmacy benefit manager.

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

22 All payment arrangements between the department, managed care organizations, and
 23 the state pharmacy benefit manager shall comply with state and federal statutes,
 24 regulations adopted by the Centers for Medicare and Medicaid Services, and any other
 25 agreement between the department and the Centers for Medicare and Medicaid
 26 Services. The department may change a payment arrangement in order to comply with
 27 state and federal statutes, regulations adopted by the Centers for Medicare and

1 Medicaid services, or any other agreement between the department and the Centers for
 2 Medicare and Medicaid services.

3 →Section 6. KRS 205.647 is amended to read as follows:

- 4 (1) As used in this section, "state pharmacy benefit manager" means a pharmacy
 5 benefit manager, [has the same meaning] as defined in KRS 304.9-020, contracted
 6 by the department, pursuant to Section 2 of this Act, to administer pharmacy
 7 benefits for all Medicaid recipients enrolled in a managed care organization in
 8 the Commonwealth.
- 9 (2) ~~[A pharmacy benefit manager contracted with a managed care organization that~~
 10 ~~provides Medicaid benefits pursuant to this chapter shall comply with the~~
 11 ~~provisions of this section and KRS 304.9-053, 304.9-054, 304.9-055, and 304.17A-~~
 12 ~~162.~~
- 13 (3) ~~KRS 304.17A-162(10), (11), (12), and (13) shall not apply to a pharmacy benefit~~
 14 ~~manager contracted directly with the cabinet to provide Medicaid benefits.~~
- 15 (4) ~~]The state~~[A]~~ pharmacy benefit manager ~~[contracting with a managed care~~
 16 ~~organization to administer Medicaid benefits]~~shall, upon receipt of a request from
 17 the Department for Medicaid Services, provide the following information to the
 18 Department for Medicaid Services in a form an manner prescribed by the
 19 Department for Medicaid Services~~[no later than August 15, 2018, and for each year~~
 20 ~~thereafter that the pharmacy benefit manager is contracted with a managed care~~
 21 ~~organization to administer Medicaid benefits]:~~~~
- 22 (a) The total Medicaid dollars paid to the state pharmacy benefit manager by a
 23 managed care organization and the total amount of Medicaid dollars paid to
 24 the pharmacy benefit manager by a managed care organization which were not
 25 subsequently paid to a pharmacy licensed in Kentucky;
- 26 (b) 1. The average reimbursement, by drug ingredient cost, dispensing fee, and
 27 any other fee paid by the state~~[a]~~ pharmacy benefit manager to licensed

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

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

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

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

19 (e) Any direct or indirect fees, charges, or any kind of assessments imposed by
20 the state pharmacy benefit manager on pharmacies licensed in Kentucky with
21 which the state pharmacy benefit manager shares common ownership,
22 management, or control; or which are owned, managed, or controlled by any
23 of the state pharmacy benefit manager's management companies, parent
24 companies, subsidiary companies, jointly held companies, or companies
25 otherwise affiliated by a common owner, manager, or holding company; or
26 which share any common members on the board of directors; or which share
27 managers in common;

- 1 (f) Any direct or indirect fees, charges, or any kind of assessments imposed by
2 the state pharmacy benefit manager on pharmacies licensed in Kentucky
3 which operate more than ten (10) locations;
- 4 (g) Any direct or indirect fees, charges, or any kind of assessments imposed by
5 the state pharmacy benefit manager on pharmacies licensed in Kentucky
6 which operate ten (10) or fewer locations; and
- 7 (h) All common ownership, management, common members of a board of
8 directors, shared managers, or control of the state~~[a]~~ pharmacy benefit
9 manager, or any of the state pharmacy benefit manager's management
10 companies, parent companies, subsidiary companies, jointly held companies,
11 or companies otherwise affiliated by a common owner, manager, or holding
12 company with any managed care organization contracted to administer
13 Kentucky Medicaid benefits, any entity which contracts on behalf of a
14 pharmacy, or any pharmacy services administration organization; or any
15 common ownership, management, common members of a board of directors,
16 shared managers, or control of a pharmacy services administration
17 organization that is contracted with the state~~[a]~~ pharmacy benefit manager,
18 with any drug wholesaler or distributor or any of the pharmacy services
19 administration organization's management companies, parent companies,
20 subsidiary companies, jointly held companies, or companies otherwise
21 affiliated by a common owner, common members of a board of directors,
22 manager, or holding company.
- 23 ~~(3)~~~~(5)~~ All information provided by the state~~[a]~~ pharmacy benefit manager pursuant
24 to subsection ~~(2)~~~~(4)~~ of this section shall reflect data for the most recent full
25 calendar year and shall be divided by month. This information shall be managed by
26 the Department for Medicaid Services in accordance with applicable law and shall
27 be exempt from KRS 61.870 to 61.884 in accordance with KRS 61.878(1)(c).

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

- 4 (a) The Department for Medicaid Services shall, in accordance with subsection
5 (2) of Section 3 of this Act, set or~~[,]~~ create,~~[or approve,]~~ and may change at
6 any time for any reason, reimbursement rates between the state~~[a]~~ pharmacy
7 benefit manager and a contracted pharmacy, or an entity which contracts on
8 behalf of a pharmacy. Reimbursement rates shall include dispensing fees
9 which take into account applicable guidance by the Center for Medicare and
10 Medicaid Services~~[. A pharmacy benefit manager shall notify the Department~~
11 ~~for Medicaid Services thirty (30) days in advance of any proposed change of~~
12 ~~over five percent (5%) in the product reimbursement rates for a pharmacy~~
13 ~~licensed in Kentucky. The Department for Medicaid Services may disallow~~
14 ~~the change within thirty (30) days of this notification];~~
- 15 (b) All laws and administrative regulations promulgated by the Department for
16 Medicaid Services, including but not limited to the regulation of maximum
17 allowable costs;
- 18 (c) The Department for Medicaid Services shall approve any contract between the
19 managed care organization and the~~[a]~~ pharmacy benefit manager;
- 20 (d) The Department for Medicaid Services shall approve any contract, any change
21 in the terms of a contract, or suspension or termination of a contract between
22 the~~[a]~~ pharmacy benefit manager ~~[contracted with a managed care~~
23 ~~organization to administer Medicaid benefits]~~and an entity which contracts on
24 behalf of a pharmacy, or any contract or any change in the terms of a contract,
25 or any suspension or termination of a contract between the~~[a]~~ pharmacy
26 benefit manager and a pharmacy or pharmacist;~~[and]~~
- 27 (e) Any fee established, modified, or implemented directly or indirectly by a

1 managed care organization, *the state* pharmacy benefit manager, or entity
2 which contracts on behalf of a pharmacy that is directly or indirectly charged
3 to, passed onto, or required to be paid by a pharmacy services administration
4 organization, pharmacy, or Medicaid recipient shall be submitted to the
5 Department for Medicaid Services for approval. This paragraph shall not
6 apply to any membership fee or service fee established, modified, or
7 implemented by a pharmacy services administration organization on a
8 pharmacy licensed in Kentucky that is not directly or indirectly related to
9 product reimbursement; *and*

10 **(f) The provisions of subsection (1) of Section 2 and Section 3 of this Act.**

11 ~~(5)~~~~(7)~~ The Department for Medicaid Services may promulgate administrative
12 regulations pursuant to KRS Chapter 13A as necessary to implement and administer
13 its responsibilities under this section. These administrative regulations may include
14 but are not limited to the assessment of fines, penalties, or sanctions for
15 noncompliance.

16 ~~(6)~~~~(8)~~ The Department for Medicaid Services may consider any information
17 ascertained pursuant to this section in the setting, creation, or approval of
18 reimbursement rates used by a pharmacy benefit manager or an entity which
19 contracts on behalf of a pharmacy.

20 ➔Section 7. If the Cabinet for Health and Family Services determines that a
21 waiver or any other authorization from a federal agency is necessary prior to the
22 implementation of any provision of this Act, the Cabinet for Health and Family Services
23 shall, within 90 days of the effective date of this Act, request the waiver or authorization
24 and may delay implementing any provision deemed to require a waiver or authorization
25 only until the waiver or authorization is granted.

26 ➔Section 8. Whereas there is urgent need to improve the administration and
27 provision of pharmacy benefits for Medicaid recipients in the Commonwealth, an

- 1 emergency is declared to exist, and this Act takes effect upon its passage and approval by
- 2 the Governor or upon its otherwise becoming a law.