

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. KRS 205.647 is amended to read as follows:

5 (1) As used in this section:~~[,]~~

6 (a) "Average reimbursement" means a statistical methodology selected by the  
7 department via any administrative regulations promulgated pursuant to this  
8 section, which shall include, at a minimum, the median and mean;

9 (b) "Department" means the Department for Medicaid Services; and

10 (c) "Pharmacy benefit manager" has the same meaning as in KRS 304.9-020.

11 (2) (a) Except as provided pursuant to subsections (4) and (5) of this section,  
12 beginning on the effective date of this Act the department shall directly  
13 administer all outpatient pharmacy benefits for all Medicaid recipients.

14 (b) The department shall, through the promulgation of administrative  
15 regulations, establish an outpatient pharmacy benefits program that  
16 includes:

17 1. A formulary;

18 2. Reimbursement methodologies; and

19 3. A dispensing fee which shall take into account applicable guidance by  
20 the Centers for Medicare and Medicaid Services.

21 (3) The department shall ensure coordination of care between the outpatient  
22 pharmacy benefits program established pursuant to subsection (2) of this section  
23 or a third-party administrator with which the department has contracted  
24 pursuant to subsection (4) of this section, if any, and managed care  
25 organizations. Any managed care techniques, principles, or administration of  
26 benefits utilized pursuant to this section shall comply with Kentucky law.

27 (4) (a) The department may contract with a third party on a fee-for-service

1           reimbursement basis for the purpose of administering the outpatient  
2           pharmacy benefits program for all Medicaid recipients established pursuant  
3           to subsection (2) of this section; however, these services shall be approved  
4           by the department.

5           (b) KRS 304.17A-162(10), (11), (12), and (13) shall not apply to a third-party  
6           administrator contracted directly with the department to administer the  
7           outpatient pharmacy benefits program.

8           (c) The following shall apply to contracts between a third-party administrator  
9           and pharmacies:

10           1. The department shall approve any contract between a third-party  
11           administrator and a pharmacy;

12           2. A third-party administrator shall not change the terms of a contract  
13           between the third-party administrator and a pharmacy without written  
14           approval from the department;

15           3. A third-party administrator shall not create, modify, implement, or  
16           indirectly establish any fee on a pharmacy, pharmacist, or a Medicaid  
17           recipient without written approval from the department; and

18           4. A third-party administrator shall utilize the formulary, reimbursement  
19           methodologies, and dispensing fee established by the department  
20           pursuant to subsection (2) of this section.

21           (5) (a) The provisions of this section shall not apply to outpatient pharmacy  
22           services provided by a health care facility that is registered as a covered  
23           entity pursuant to 42 U.S.C. sec. 256b or any pharmacy owned by or  
24           contracted with such a covered entity.

25           (b) Pursuant to administrative regulations promulgated by the department, a  
26           Medicaid managed care organization, either directly or through a pharmacy  
27           benefit manager, shall administer and reimburse outpatient pharmacy

1           claims submitted by a health care facility that is registered as a covered  
 2           entity pursuant to 42 U.S.C. sec. 256b or any pharmacy owned or contracted  
 3           with such a covered entity in accordance with the contractual agreements  
 4           that the Medicaid managed care organization or its pharmacy benefit  
 5           manager has with such facilities and pharmacies.

6           (c) A Medicaid managed care organization or its pharmacy benefit manager  
 7           shall not exclude any health care facility that is registered as a covered  
 8           entity pursuant to 42 U.S.C. sec. 256b from its pharmacy network.

9           (d) The department shall promulgate administrative regulations necessary to  
 10           carry out the provisions of this subsection.

11       **(6)** A pharmacy benefit manager contracted with a managed care organization to  
 12       administer outpatient pharmacy benefits pursuant to subsection (5) of this section  
 13       ~~{that provides Medicaid benefits pursuant to this chapter}~~ shall:

14           (a) Comply with the provisions of this section and KRS 304.9-053, 304.9-054,  
 15           304.9-055, and 304.17A-162; and ~~[-~~

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

18       ~~(b){(4)} [A pharmacy benefit manager contracting with a managed care~~  
 19       ~~organization to administer Medicaid benefits shall ]~~Provide the following  
 20       information to the Department for Medicaid Services no later than August 15,  
 21       2018, and for each year thereafter that the pharmacy benefit manager is  
 22       contracted with a managed care organization to administer Medicaid benefits:

23           1.~~{(a)}~~ The total Medicaid dollars paid to the pharmacy benefit manager  
 24           by a managed care organization and the total amount of Medicaid dollars  
 25           paid to the pharmacy benefit manager by a managed care organization  
 26           which were not subsequently paid to a pharmacy licensed in Kentucky;

27           2.~~{(b)1.}~~ The average reimbursement, by drug ingredient cost, dispensing

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

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

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

19 ~~4.[(d)]~~ The average reimbursement by drug ingredient cost, dispensing  
20 fee, and any other fee, paid by a pharmacy benefit manager to  
21 pharmacies licensed in Kentucky which operate ten (10) or fewer  
22 locations;

23 ~~5.[(e)]~~ Any direct or indirect fees, charges, or any kind of assessments  
24 imposed by the pharmacy benefit manager on pharmacies licensed in  
25 Kentucky with which the pharmacy benefit manager shares common  
26 ownership, management, or control; or which are owned, managed, or  
27 controlled by any of the pharmacy benefit manager's management

1 companies, parent companies, subsidiary companies, jointly held  
2 companies, or companies otherwise affiliated by a common owner,  
3 manager, or holding company; or which share any common members on  
4 the board of directors; or which share managers in common;

5 ~~6.(f)~~ 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 more than ten (10) locations;

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

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

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

6 ~~(8)~~~~(6)~~ Any contract entered into or renewed for the delivery of Medicaid services by  
7 a managed care organization on or after July 1, 2018, shall comply with the  
8 following requirements:

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

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

22 (c) The Department for Medicaid Services shall approve any contract between the  
23 managed care organization and a pharmacy benefit manager;

24 (d) The Department for Medicaid Services shall approve any contract, any change  
25 in the terms of a contract, or suspension or termination of a contract between a  
26 pharmacy benefit manager contracted with a managed care organization to  
27 administer Medicaid benefits and an entity which contracts on behalf of a

1 pharmacy, or any contract or any change in the terms of a contract, or any  
2 suspension or termination of a contract between a pharmacy benefit manager  
3 and a pharmacy or pharmacist; and

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

14 ~~(9)~~~~(7)~~ The Department for Medicaid Services may promulgate administrative  
15 regulations pursuant to KRS Chapter 13A as necessary to implement and administer  
16 its responsibilities under this section. These administrative regulations may include  
17 but are not limited to the assessment of fines, penalties, or sanctions for  
18 noncompliance.

19 ~~(10)~~~~(8)~~ The Department for Medicaid Services may consider any information  
20 ascertained pursuant to this section in the setting, creation, or approval of  
21 reimbursement rates used by a pharmacy benefit manager or an entity which  
22 contracts on behalf of a pharmacy.

23 ➔Section 2. If the Cabinet for Health and Family Services determines that a  
24 waiver or authorization from a federal agency is necessary prior to the implementation of  
25 any provisions of this Act, the Cabinet for Health and Family Services shall, within ninety  
26 (90) days of the effective date of this Act, request the waiver or authorization and may  
27 delay implementing any provision deemed to require a waiver or authorization only until

1 the waiver or authorization is granted.

2       ➔Section 3. Whereas there is urgent need to improve the administration and  
3 provision of outpatient pharmacy benefits to Medicaid recipients, an emergency is  
4 declared to exist, and this Act takes effect on July 1, 2020.