

1 AN ACT relating to pharmacy benefits in the Medicaid program and declaring an
2 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 *(1) As used in this section:*

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

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

9 *and*

10 *(c) "State pharmacy benefit manager" has the same meaning as in KRS*
11 *205.5510.*

12 *(2) (a) By December 31, 2021, the department shall, in accordance with KRS*
13 *Chapter 45A, select and enter into a contract, the effective date of which*
14 *shall not be later than December 31 2021, with a single independent entity*
15 *for the purpose of monitoring all Medicaid pharmacy benefit claims for*
16 *every Medicaid beneficiary regardless of whether the beneficiary's Medicaid*
17 *benefits are managed through a fee-for-service or managed-care model.*

18 *(b) No contract entered into pursuant to this subsection shall be for a term*
19 *longer than two (2) years but may be renewed for like or lesser periods.*

20 *(3) To be eligible to receive a contract pursuant to this section, an entity shall:*

21 *(a) Have at least five (5) years of experience reviewing and auditing pharmacy*
22 *claims and pharmacy benefit manager operations;*

23 *(b) Be capable of performing the analysis of pharmacy benefit claims to*
24 *validate accuracy and identify errors in near real-time;*

25 *(c) Not be an entity that performs annual retroactive audits of pharmacy*
26 *benefit claims for the department; and*

27 *(d) Not be affiliated by common parent company or holding company, share*

1 any common members of the board of directors, or share managers in
2 common with the state pharmacy benefit manager or a managed care
3 organization.

4 (4) The entity contracted by the department pursuant to subsection (2) of this section
5 shall:

6 (a) Be granted full access to:

7 1. The state pharmacy benefit manager contract awarded by the
8 department pursuant to KRS 205.5512, and all pertinent reference
9 documents within that contract, including but not limited to any price
10 lists or specialty drug price lists which shall be provided to the
11 monitoring entity contracted pursuant to this section by the state
12 pharmacy benefit manager and which shall be updated by the state
13 pharmacy benefit manager within five (5) days of the effective date of
14 any pricing changes;

15 2. Any other contract that defines the state pharmacy benefit manager's
16 obligations and responsibilities as it relates to processing Medicaid
17 pharmacy benefit claims in the Commonwealth, including any
18 contract between the state pharmacy benefit manager and a managed
19 care organization; and

20 3. Invoices and unaltered claims files associated with Medicaid
21 pharmacy benefits;

22 (b) Analyze one hundred percent (100%) of invoices or claims submitted for
23 payment by the department or a managed care organization and shall not
24 utilize statistical sampling methods in lieu of analyzing all invoices and
25 claims;

26 (c) Identify and correct errors in pharmacy benefit claims in order to avoid or
27 reduce erroneous overpayments by the department to the state pharmacy

1 benefit manager, either directly or indirectly through a managed care
2 organization;

3 (d) Identify underpayments made by the state pharmacy benefit manager to
4 pharmacies licensed in this state;

5 (e) Identify inappropriate or erroneous fees imposed by the state pharmacy
6 benefit manager in violation of KRS 205.5512;

7 (f) Analyze the state pharmacy benefit manager's performance and compliance
8 with:

9 1. The contract between the department and the state pharmacy benefit
10 manager;

11 2. The state pharmacy benefit manager and each managed care
12 organization; and

13 3. KRS 205.5512, 205.5514, 205.5516, and 205.5518; and

14 (g) Beginning on April 30, 2022, and quarterly thereafter, submit a report to
15 the Medicaid Oversight and Advisory Committee. The report shall include a
16 summary of the analysis and errors identified pursuant to paragraphs (c),
17 (d), (e), and (f) of this section during the previous quarter.

18 (5) The entity contracted by the department pursuant to subsection (2) of this section
19 shall not perform drug utilization reviews.

20 (6) The analysis of claims and the identification of potential errors required by
21 subsection (4)(b), (c), and (d) of this section shall:

22 (a) Occur prior to the due date of each claim or invoice submitted by the state
23 pharmacy benefit manager or within five (5) days of receipt of the claim or
24 invoice, whichever is longer; and

25 (b) Consider at least the following:

26 1. Compliance with all relevant administrative regulations promulgated
27 by the department;

- 1 2. Compliance with the Medicaid State Plan;
- 2 3. Compliance with the contract between the department and the state
- 3 pharmacy benefit manager;
- 4 4. Compliance with any contract between the state pharmacy benefit
- 5 manager and a managed care organization; and
- 6 5. The market competitiveness of payments, including the adequacy of
- 7 the state pharmacy benefit manager's payments to pharmacies.

8 (7) (a) All underpayments identified pursuant to subsection (4)(d) of this section
9 shall be reviewed by the department at least quarterly. If the department
10 verifies that an underpayment did in fact occur, the department shall,
11 within ten (10) days after the underpayment was verified, notify the state
12 pharmacy benefit manager in writing of the verification of an under
13 payment, the amount of the underpayment, and the need to make a
14 corrective payment to the pharmacy. The state pharmacy benefit manager
15 shall have ninety (90) days from receipt of notice from the department to
16 make the required corrective payment to the pharmacy.

17 (b) The state pharmacy benefit manager may, within thirty (30) days after the
18 date of the mailing of the department's notice, file a written request for an
19 administrative hearing on the notice of underpayment. The hearing shall be
20 conducted on the notice in compliance with the requirements of KRS
21 Chapter 13B.

22 (c) Final orders of the department after administrative hearings shall not be
23 subject to judicial review.

24 (8) For the first two (2) year contract entered into by the department pursuant to
25 subsection (2) of this section, the total annual compensation paid by the
26 department to the contracted entity shall not exceed thirty percent (30%) of the
27 total savings generated by the contracted entity as determined by the department.

1 *(9) The department may promulgate administrative regulations necessary to carry*
2 *out this section.*

3 *(10) The provisions of this section shall expire on January 1, 2024, unless otherwise*
4 *reauthorized by an act of the General Assembly.*

5 ➔Section 2. Whereas there is urgent need to improve the administration and
6 provision of pharmacy benefits for Medicaid beneficiaries in the Commonwealth, an
7 emergency is declared to exist, and this Act takes effect upon its passage and approval by
8 the Governor or upon its otherwise becoming law.