

1 AN ACT relating to pharmacy benefit managers.

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

3 ➔Section 1. KRS 205.647 is amended to read as follows:

- 4 (1) As used in this section, "pharmacy benefit manager" has the same meaning as in
5 KRS 304.9-020.
- 6 (2) A pharmacy benefit manager contracted with a managed care organization that
7 provides Medicaid benefits pursuant to this chapter shall comply with the
8 provisions of this section and KRS 304.9-053, 304.9-054, 304.9-055, and 304.17A-
9 162.
- 10 (3) KRS 304.17A-162(10), (11), (12), and (13) shall not apply to a pharmacy benefit
11 manager contracted directly with the cabinet to provide Medicaid benefits.
- 12 (4) A pharmacy benefit manager contracting with a managed care organization to
13 administer Medicaid benefits shall provide the following information to the
14 Department for Medicaid Services no later than August 15, 2018, and for each year
15 thereafter that the pharmacy benefit manager is contracted with a managed care
16 organization to administer Medicaid benefits:
- 17 (a) The total Medicaid dollars paid to the pharmacy benefit manager by a
18 managed care organization and the total amount of Medicaid dollars paid to
19 the pharmacy benefit manager by a managed care organization which were not
20 subsequently paid to a pharmacy licensed in Kentucky;
- 21 (b) 1. The average reimbursement, by drug ingredient cost, dispensing fee, and
22 any other fee paid by a pharmacy benefit manager to licensed
23 pharmacies with which the pharmacy benefit manager shares common
24 ownership, management, or control; or which are owned, managed, or
25 controlled by any of the pharmacy benefit manager's management
26 companies, parent companies, subsidiary companies, jointly held
27 companies, or companies otherwise affiliated by a common owner,

1 manager, or holding company; or which share any common members on
2 the board of directors; or which share managers in common.

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

7 (c) The average reimbursement, by drug ingredient cost, dispensing fee, and any
8 other fee, paid by a pharmacy benefit manager to pharmacies licensed in
9 Kentucky which operate more than ten (10) locations;

10 (d) The average reimbursement by drug ingredient cost, dispensing fee, and any
11 other fee, paid by a pharmacy benefit manager to pharmacies licensed in
12 Kentucky which operate ten (10) or fewer locations;

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

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

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

1 (h) All common ownership, management, common members of a board of
2 directors, shared managers, or control of a pharmacy benefit manager, or 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 with any
6 managed care organization contracted to administer Kentucky Medicaid
7 benefits, any entity which contracts on behalf of a pharmacy, or any pharmacy
8 services administration organization; or any common ownership,
9 management, common members of a board of directors, shared managers, or
10 control of a pharmacy services administration organization that is contracted
11 with a pharmacy benefit manager, with any drug wholesaler or distributor or
12 any of the pharmacy services administration organization's management
13 companies, parent companies, subsidiary companies, jointly held companies,
14 or companies otherwise affiliated by a common owner, common members of a
15 board of directors, manager, or holding company.

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

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

24 (a) The Department for Medicaid Services shall set~~[-]~~or create~~[-]~~~~or approve~~, and
25 may change at any time for any reason, reimbursement rates between a
26 pharmacy benefit manager and a contracted pharmacy, or an entity which
27 contracts on behalf of a pharmacy. Reimbursement rates shall include

- 1 dispensing fees which take into account applicable guidance by the Center for
2 Medicare and Medicaid Services. A pharmacy benefit manager shall notify the
3 Department for Medicaid Services thirty (30) days in advance of any proposed
4 change of over five percent (5%) in the product reimbursement rates for a
5 pharmacy licensed in Kentucky. The Department for Medicaid Services may
6 disallow the change within thirty (30) days of this notification;
- 7 (b) All laws and administrative regulations promulgated by the Department for
8 Medicaid Services, including but not limited to the regulation of maximum
9 allowable costs;
- 10 (c) The Department for Medicaid Services shall approve any contract between the
11 managed care organization and a pharmacy benefit manager;
- 12 (d) The Department for Medicaid Services shall approve any contract, any change
13 in the terms of a contract, or suspension or termination of a contract between a
14 pharmacy benefit manager contracted with a managed care organization to
15 administer Medicaid benefits and an entity which contracts on behalf of a
16 pharmacy, or any contract or any change in the terms of a contract, or any
17 suspension or termination of a contract between a pharmacy benefit manager
18 and a pharmacy or pharmacist; and
- 19 (e) Any fee established, modified, or implemented directly or indirectly by a
20 managed care organization, pharmacy benefit manager, or entity which
21 contracts on behalf of a pharmacy that is directly or indirectly charged to,
22 passed onto, or required to be paid by a pharmacy services administration
23 organization, pharmacy, or Medicaid recipient shall be submitted to the
24 Department for Medicaid Services for approval. This paragraph shall not
25 apply to any membership fee or service fee established, modified, or
26 implemented by a pharmacy services administration organization on a
27 pharmacy licensed in Kentucky that is not directly or indirectly related to

1 product reimbursement.

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

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