{As Amended by Senate Committee of the Whole}

Session of 2015

Senate Substitute for HOUSE BILL No. 2149

By Committee on Public Health and Welfare

3-19

AN ACT concerning the Kansas program of medical assistance; relating to donor human breast milk and medications used under medicaid; amending K.S.A. 2014 Supp. 39-7,119, 39-7,120 and 39-7,121b and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. (a) The department of health and environment shall reimburse a medical care facility for prescribed medically necessary donor human breast milk provided to a recipient of medical assistance under the Kansas program of medical assistance if:

(1) Such recipient is:

(A) An infant under the age of three months;

(B) critically ill; and

(C) in the neonatal intensive care unit of the hospital;

(2) a person licensed to practice medicine and surgery orders the donor human breast milk for the recipient;

(3) the department determines that the donor human breast milk is medically necessary for the recipient;

(4) the parent or legal guardian of the recipient signs and dates an informed consent form indicating the risks and benefits of using banked donor human breast milk; and

(5) the donor human breast milk is obtained from a donor human breast milk bank that meets the quality requirements established by the department of health and environment.

(b) An electronic prior authorization system that uses the best medical evidence and care and treatment guidelines consistent with national standards shall be used by the department to determine medical necessity.

(c) The department shall promulgate rules and regulations necessary to implement the provisions of this section ***{prior to July 1, 2016}***.

(d) The department shall implement and administer the provisions of this section in a manner consistent with applicable federal laws and regulations. The department shall seek any necessary approvals of the federal government that are required for the implementation of this section.

(e) As used in this section:

(1) "Department" means the department of health and environment.

(2) "Medical care facility" shall mean the same as in K.S.A. 65-425, and amendments thereto.

Sec. 2. K.S.A. 2014 Supp. 39-7,119 is hereby amended to read as follows: 39-7,119. (a) There is hereby created the medicaid drug utilization review board which shall be responsible for the implementation of retrospective and prospective drug utilization programs under the Kansas medicaid program.

(b) Except as provided in subsection (i), the board shall consist of at least seven members appointed as follows:

(1) Two licensed physicians actively engaged in the practice of medicine, nominated by the Kansas medical society and appointed by the secretary of health and environment from a list of four nominees;

(2) one licensed physician actively engaged in the practice of osteopathic medicine, nominated by the Kansas association of osteopathic medicine and appointed by the secretary of health and environment from a list of four nominees;

(3) two licensed pharmacists actively engaged in the practice of pharmacy, nominated by the Kansas pharmacy association and appointed by the secretary of health and environment from a list of four nominees;

(4) one person licensed as a pharmacist and actively engaged in academic pharmacy, appointed by the secretary of health and environment from a list of four nominees provided by the university of Kansas; *and*

(5) one licensed professional nurse actively engaged in long-term care nursing, nominated by the Kansas state nurses association and appointed by the secretary of health and environment from a list of four nominees.

(c) The secretary of health and environment may add two additional members so long as no class of professional representatives exceeds 51% of the membership.

(d) The physician and pharmacist members shall have expertise in the clinically appropriate prescribing and dispensing of outpatient drugs.

(e) The appointments to the board shall be for terms of three years. In making the appointments, the secretary of health and environment shall provide for geographic balance in the representation on the board to the extent possible. Subject to the provisions of subsection (i), members may be reappointed.

(f) The board shall elect a chairperson from among board members who shall serve a one-year term. The chairperson may serve consecutive terms.

(g) The board, in accordance with K.S.A. 75-4319, and amendments thereto, may recess for a closed or executive meeting when it is considering matters relating to identifiable patients or providers.

(h) All actions of the medicaid drug utilization review board shall be

upon the affirmative vote of five members of the board and the vote of each member present when action was taken shall be recorded by roll call vote.

(i) Upon the expiration of the term of office of any member of the medicaid drug utilization review board on or after the effective date of this act and in any case of a vacancy existing in the membership position of any member of the medicaid drug utilization review board on or after the effective date of this act, a successor shall be appointed by the secretary of health and environment so that as the terms of members expire, or vacancies occur, members are appointed and the composition of the board is changed in accordance with the following and such appointment shall be made by the secretary of health and environment in the following order of priority:

(1) One member shall be a licensed pharmacist who is actively performing or who has experience performing medicaid pharmacy services for a hospital and who is nominated by the Kansas hospital association and appointed by the secretary of health and environment from a list of two or more nominees;

(2) one member shall be a licensed pharmacist who is actively performing or who has experience performing medicaid pharmacy services for a licensed adult care home and who is nominated by the state board of pharmacy and appointed by the secretary of health and environment from a list of two or more nominees;

(3) one member shall be a licensed physician who is actively engaged in the general practice of allopathic medicine and who has practice experience with the state medicaid plan and who is nominated by the Kansas medical society and appointed by the secretary of health and environment from a list of two or more nominees;

(4) one member shall be a licensed physician who is actively engaged in mental health practice providing care and treatment to persons with mental illness, who has practice experience with the state medicaid plan and who is nominated by the Kansas psychiatric society and appointed by the secretary of health and environment from a list of two or more nominees;

(5) one member shall be a licensed physician who is the medical director of a nursing facility, who has practice experience with the state medicaid plan and who is nominated by the Kansas medical society and appointed by the secretary of health and environment from a list of two or more nominees;

(6) one member shall be a licensed physician who is actively engaged in the general practice of osteopathic medicine, who has practice experience with the state medicaid plan and who is nominated by the Kansas association of osteopathic medicine and who is appointed by the

secretary of health and environment from a list of two or more nominees;

(7) one member shall be a licensed pharmacist who is actively engaged in retail pharmacy, who has practice experience with the state medicaid plan and who is nominated by the state board of pharmacy and appointed by the secretary of health and environment from a list of two or more nominees;

(8) one member shall be a licensed pharmacist who is actively engaged in or who has experience in research pharmacy and who is nominated jointly by the Kansas task force for the pharmaceutical research and manufacturers association and the university of Kansas and appointed by the secretary of health and environment from a list of two or more jointly nominated persons; and

(9) one member shall be a licensed advanced practice registered nurse or physician assistant actively engaged in the practice of providing the health care and treatment services such person is licensed to perform, who has practice experience with the state medicaid plan and who is nominated jointly by the Kansas state nurses' association and the Kansas academy of physician assistants and appointed by the secretary of health and environment from a list of two or more jointly nominated persons.

(j) The medicaid drug utilization review board shall meet at least quarterly and such meetings shall be open to the public and shall provide an opportunity for public comments. The board shall post notice of such meetings at least 14 business days before the scheduled meetings.

Sec. 3. K.S.A. 2014 Supp. 39-7,120 is hereby amended to read as follows: 39-7,120. (a) The secretary of health and environment ~~shall not restrict patient access to prescription-only drugs pursuant to a program of prior authorization or a restrictive formulary except by rules and regulations adopted in accordance with K.S.A. 75-5625, and amendments thereto. Prior to the promulgation of any such rules and regulations, the secretary of health and environment shall submit such proposed rules and regulations to the medicaid drug utilization review board for written comment~~ *may implement prior authorization of any new prescription-only drugs until such drugs are reviewed by the medicaid drug utilization review board at the next scheduled meeting. New drugs shall be approved for use when such drugs are used within package insert guidelines approved by the federal food and drug administration and clinically reputable compendia, such as the United States pharmacopeia, as approved by the secretary of health and environment in the rules and regulations, during the period before such drugs are reviewed by the medicaid drug utilization review board*. The secretary of health and environment may not implement permanent prior authorization until 30 days after receipt of comments by the drug utilization review board.

(b) When considering recommendations from the medicaid drug

utilization review board regarding the prior authorization of a drug, the secretary of health and environment shall consider the net economic impact of such prior authorization, including, but not limited to, the costs of specific drugs, rebates or discounts pursuant to 42 U.S.C. § 1396r-8, dispensing costs, dosing requirements and utilization of other drugs or other medicaid health care services which may be related to the prior authorization of such drug.

Sec. 4. K.S.A. 2014 Supp. 39-7,121b is hereby amended to read as follows: 39-7,121b. *(a)* No requirements for prior authorization or other restrictions on medications used to treat mental illnesses ~~such as schizophrenia, depression or bipolar disorder~~ may be imposed on medicaid recipients. ~~Medications that will be available under the state medicaid plan without restriction for persons with mental illnesses shall include atypical antipsychotic medications, conventional antipsychotic medications and other medications used for the treatment of mental illnesses.~~*, except on medications subject to guidelines developed by the drug utilization review board according to subsection (c). None of the following shall be construed as restrictions under this subsection:*

(1) Any alert to a pharmacist that does not deny the claim and can be overridden by the pharmacist;

(2) prescriber education activities; or

(3) the consolidation of dosing regimens to equivalent doses ~~and other such dose optimization policies~~.

(b) The mental health medication advisory committee shall provide recommendations to the drug utilization review board for the purpose of developing guidelines. The drug utilization review board may accept the recommendations of the mental health medication advisory committee in whole and such recommendations shall take effect immediately upon such approval. The drug utilization review board may reject the recommendations of the mental health medication advisory committee in whole and such recommendations shall be referred back to the mental health medication advisory committee for further consideration. No medication guidelines related to mental health medications shall be adopted by the drug utilization review board without recommendations made by the mental health medication advisory committee.

(c) For the medications used to treat mental illness that are available for use on July 1, 2015, the drug utilization review board shall review all such medications prior to July 1, 2016. For medications used to treat mental illness that do not exist on July 1, 2015, but are later developed or believed to be effective in the treatment of mental illness, the drug utilization board shall review all such medications within six months of presentation to the drug utilization review board.

(d) The mental health medication advisory committee is hereby established.

(1) The mental health medication advisory committee shall be appointed by the secretary of health and environment and consist of nine members; including the secretary of health and environment, or the secretary's designee, who shall be the chair of the committee; two persons licensed to practice medicine and surgery with board certification in psychiatry nominated by the Kansas psychiatric society, one of whom specializes in geriatric mental health; two persons licensed to practice medicine and surgery with board certification in psychiatry nominated by the association of community mental health centers of Kansas, one of whom specializes in pediatric mental health; two pharmacists nominated by the Kansas pharmacy association; one person licensed to practice medicine and surgery nominated by the Kansas medical society; and one advanced practice registered nurse engaged in a role of mental health nominated by the Kansas state nurses association. All nominating bodies shall provide two nominees for each position for which they provide nominations, with the secretary selecting the appointee from the provided nominees.

(2) The mental health medication advisory committee shall meet upon the request of the chair of the mental health medication advisory committee, but shall meet at least one time each quarter.

(3) Members of the mental health medication advisory committee are entitled to compensation and expenses as provided in K.S.A. 75-3223, and amendments thereto. Members of the committee attending committee meetings shall be paid mileage and all other applicable expenses, provided such expenses are consistent with policies established by the secretary of health and environment.

Sec. 5. K.S.A. 2014 Supp. 39-7,119, 39-7,120 and 39-7,121b are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the statute book.