

1 AN ACT relating to pharmacy reimbursement practices.

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

3 ➔Section 1. KRS 304.9-440 is amended to read as follows:

- 4 (1) The commissioner may place on probation, suspend, or may impose conditions  
5 upon the continuance of a license for not more than twenty-four (24) months,  
6 revoke, or refuse to issue or renew any license issued under this subtitle or any  
7 surplus lines broker, life settlement broker, or life settlement provider license, or  
8 may levy a civil penalty in accordance with KRS 304.99-020, or any combination of  
9 actions for any one (1) or more of the following causes:
- 10 (a) Providing incorrect, misleading, incomplete, or materially untrue information  
11 in the license application;
- 12 (b) Violating any insurance laws, or violating any administrative regulations,  
13 subpoena, or order of the commissioner or of another state's insurance  
14 commissioner;
- 15 (c) Obtaining or attempting to obtain a license through misrepresentation or  
16 fraud;
- 17 (d) Improperly withholding, misappropriating, or converting any moneys or  
18 properties received in the course of doing insurance or the business of life  
19 settlements;
- 20 (e) Intentionally misrepresenting the terms of an actual or proposed insurance  
21 contract, life settlement contract, or application for insurance;
- 22 (f) Having been convicted of or having pled guilty or nolo contendere to any  
23 felony;
- 24 (g) Having admitted or been found to have committed any unfair insurance trade  
25 practice, insurance fraud, or fraudulent life settlement act;
- 26 (h) Using fraudulent, coercive, or dishonest practices; or demonstrating  
27 incompetence, untrustworthiness, or financial irresponsibility; or being a

- 1 source of injury or loss to the public in the conduct of business in this state or  
2 elsewhere;
- 3 (i) Having an insurance license, life settlement license, or its equivalent, denied,  
4 suspended, or revoked in any other state, province, district, or territory;
- 5 (j) Surrendering or otherwise terminating any license issued by this state or by  
6 any other jurisdiction, under threat of disciplinary action, denial, or refusal of  
7 the issuance of or renewal of any other license issued by this state or by any  
8 other jurisdiction; or revocation or suspension of any other license held by the  
9 licensee issued by this state or by any other jurisdiction;
- 10 (k) Forging another's name to an application for insurance, to any other document  
11 related to an insurance transaction, or to any document related to the business  
12 of life settlements;
- 13 (l) Cheating, including improperly using notes or any other reference material to  
14 complete an examination for license;
- 15 (m) Knowingly accepting insurance or life settlement business from an individual  
16 or business entity who is not licensed, but who is required to be licensed under  
17 this subtitle;
- 18 (n) Failing to comply with an administrative or court order imposing a child  
19 support obligation;
- 20 (o) Failing to pay state income tax or to comply with any administrative or court  
21 order directing payment of state income tax;
- 22 (p) Having been convicted of a misdemeanor for which restitution is ordered in  
23 excess of three hundred dollars (\$300), or of any misdemeanor involving  
24 dishonesty, breach of trust, or moral turpitude;
- 25 (q) Failing to no longer meet the requirements for initial licensure;
- 26 (r) If a life settlement provider, demonstrating a pattern of unreasonable  
27 payments to owners or failing to honor contractual obligations set out in a life

1 settlement contract;

2 (s) Entering into any life settlement contract or using any form that has not been  
3 approved pursuant to Subtitle 15 of this chapter;

4 (t) If a licensee, having assigned, transferred, or pledged a policy subject to a life  
5 settlement contract to a person other than a life settlement provider licensed in  
6 this state, an accredited investor or qualified institutional buyer as defined,  
7 respectively, in Regulation D, Rule 501 or Rule 144a of the Federal Securities  
8 Act of 1933, as amended, a financing entity, a special purpose entity, or a  
9 related provider trust;

10 **(u) If the licensee is a pharmacy benefit manager:**

11 **1. In the case of any invoice audit or other audit to determine**  
12 **reimbursement eligibility of a pharmacy, refusing to accept as valid**  
13 **any invoices from any wholesaler licensed by the Kentucky Board of**  
14 **Pharmacy from which the pharmacy has purchased prescription**  
15 **drugs; or**

16 **2. Requiring that any wholesaler licensed by the Kentucky Board of**  
17 **Pharmacy hold any third-party accreditation or certification as:**

18 **a. A condition of reimbursement eligibility of a pharmacy; or**

19 **b. A requirement to validate a pharmacy invoice; or**

20 ~~(v)~~~~(u)~~ Any other cause for which issuance of the license could have been  
21 refused, had it then existed and been known to the commissioner.

22 (2) The license of a business entity may be suspended, revoked, or refused for any  
23 cause relating to an individual designated in or registered under the license if the  
24 commissioner finds that an individual licensee's violation was known or should  
25 have been known by one (1) or more of the partners, officers, or managers acting on  
26 behalf of the business entity and the violation was not reported to the Department of  
27 Insurance nor corrective action taken.

- 1 (3) The license of a pharmacy benefit manager may, in the discretion of the  
2 commissioner, be suspended, revoked, or refused for any cause enumerated in  
3 subsection (1) of this section, and for violations of KRS 205.647, 304.9-053, 304.9-  
4 054, 304.9-055, and 304.17A-162. The pharmacy benefit manager shall also be  
5 subject to the same civil penalties under KRS 304.99-020 as an insurer.
- 6 (4) The applicant or licensee may make written request for a hearing in accordance with  
7 KRS 304.2-310.
- 8 (5) The commissioner shall retain the authority to enforce the provisions and penalties  
9 of this chapter against any individual or business entity who is under investigation  
10 for or charged with a violation of this chapter, even if the individual's or business  
11 entity's license has been surrendered or has lapsed by operation of law.
- 12 (6) The commissioner may suspend, revoke, or refuse to renew the license of a licensed  
13 insurance agent operating as a life settlement broker, pursuant to KRS 304.15-700,  
14 if the commissioner finds that such insurance agent has violated the provisions of  
15 KRS 304.15-700 to 304.15-725.
- 16 (7) If the commissioner denies a license application or suspends, revokes, or refuses to  
17 renew the license of a life settlement provider or life settlement broker, or suspends,  
18 revokes, or refuses to renew the license of a licensed life insurance agent operating  
19 as a life settlement broker pursuant to KRS 304.15-700, the commissioner shall  
20 comply with the provisions of this section and KRS Chapter 13B.
- 21 ➔Section 2. KRS 205.647 is amended to read as follows:
- 22 (1) As used in this section, "pharmacy benefit manager" has the same meaning as in  
23 KRS 304.9-020.
- 24 (2) A pharmacy benefit manager contracted with a managed care organization that  
25 provides Medicaid benefits pursuant to this chapter shall comply with the  
26 provisions of this section and KRS 304.9-053, 304.9-054, 304.9-055, **Section 1 of**  
27 **this Act**, and 304.17A-162.

- 1 (3) KRS 304.17A-162(10), (11), (12), and (13) shall not apply to a pharmacy benefit  
2 manager contracted directly with the cabinet to provide Medicaid benefits.
- 3 (4) A pharmacy benefit manager contracting with a managed care organization to  
4 administer Medicaid benefits shall provide the following information to the  
5 Department for Medicaid Services no later than August 15, 2018, and for each year  
6 thereafter that the pharmacy benefit manager is contracted with a managed care  
7 organization to administer Medicaid benefits:
- 8 (a) The total Medicaid dollars paid to the pharmacy benefit manager by a  
9 managed care organization and the total amount of Medicaid dollars paid to  
10 the pharmacy benefit manager by a managed care organization which were not  
11 subsequently paid to a pharmacy licensed in Kentucky;
- 12 (b) 1. The average reimbursement, by drug ingredient cost, dispensing fee, and  
13 any other fee paid by a pharmacy benefit manager to licensed  
14 pharmacies with which the pharmacy benefit manager shares common  
15 ownership, management, or control; or which are owned, managed, or  
16 controlled by any of the pharmacy benefit manager's management  
17 companies, parent companies, subsidiary companies, jointly held  
18 companies, or companies otherwise affiliated by a common owner,  
19 manager, or holding company; or which share any common members on  
20 the board of directors; or which share managers in common.
- 21 2. For the purposes of this subsection, "average reimbursement" means a  
22 statistical methodology selected by the Department for Medicaid  
23 Services via any administrative regulations promulgated pursuant to this  
24 section which shall include, at a minimum, the median and mean;
- 25 (c) The average reimbursement, by drug ingredient cost, dispensing fee, and any  
26 other fee, paid by a pharmacy benefit manager to pharmacies licensed in  
27 Kentucky which operate more than ten (10) locations;

- 1 (d) The average reimbursement by drug ingredient cost, dispensing fee, and any  
2 other fee, paid by a pharmacy benefit manager to pharmacies licensed in  
3 Kentucky which operate ten (10) or fewer locations;
- 4 (e) Any direct or indirect fees, charges, or any kind of assessments imposed by  
5 the pharmacy benefit manager on pharmacies licensed in Kentucky with  
6 which the pharmacy benefit manager shares common ownership,  
7 management, or control; or which are owned, managed, or controlled by any  
8 of the pharmacy benefit manager's management companies, parent companies,  
9 subsidiary companies, jointly held companies, or companies otherwise  
10 affiliated by a common owner, manager, or holding company; or which share  
11 any common members on the board of directors; or which share managers in  
12 common;
- 13 (f) Any direct or indirect fees, charges, or any kind of assessments imposed by  
14 the pharmacy benefit manager on pharmacies licensed in Kentucky which  
15 operate more than ten (10) locations;
- 16 (g) Any direct or indirect fees, charges, or any kind of assessments imposed by  
17 the pharmacy benefit manager on pharmacies licensed in Kentucky which  
18 operate ten (10) or fewer locations; and
- 19 (h) All common ownership, management, common members of a board of  
20 directors, shared managers, or control of a pharmacy benefit manager, or any  
21 of the pharmacy benefit manager's management companies, parent companies,  
22 subsidiary companies, jointly held companies, or companies otherwise  
23 affiliated by a common owner, manager, or holding company with any  
24 managed care organization contracted to administer Kentucky Medicaid  
25 benefits, any entity which contracts on behalf of a pharmacy, or any pharmacy  
26 services administration organization; or any common ownership,  
27 management, common members of a board of directors, shared managers, or

1 control of a pharmacy services administration organization that is contracted  
2 with a pharmacy benefit manager, with any drug wholesaler or distributor or  
3 any of the pharmacy services administration organization's management  
4 companies, parent companies, subsidiary companies, jointly held companies,  
5 or companies otherwise affiliated by a common owner, common members of a  
6 board of directors, manager, or holding company.

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

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

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

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

- 1 (c) The Department for Medicaid Services shall approve any contract between the  
2 managed care organization and a pharmacy benefit manager;
- 3 (d) The Department for Medicaid Services shall approve any contract, any change  
4 in the terms of a contract, or suspension or termination of a contract between a  
5 pharmacy benefit manager contracted with a managed care organization to  
6 administer Medicaid benefits and an entity which contracts on behalf of a  
7 pharmacy, or any contract or any change in the terms of a contract, or any  
8 suspension or termination of a contract between a pharmacy benefit manager  
9 and a pharmacy or pharmacist; and
- 10 (e) Any fee established, modified, or implemented directly or indirectly by a  
11 managed care organization, pharmacy benefit manager, or entity which  
12 contracts on behalf of a pharmacy that is directly or indirectly charged to,  
13 passed onto, or required to be paid by a pharmacy services administration  
14 organization, pharmacy, or Medicaid recipient shall be submitted to the  
15 Department for Medicaid Services for approval. This paragraph shall not  
16 apply to any membership fee or service fee established, modified, or  
17 implemented by a pharmacy services administration organization on a  
18 pharmacy licensed in Kentucky that is not directly or indirectly related to  
19 product reimbursement.
- 20 (7) The Department for Medicaid Services may promulgate administrative regulations  
21 pursuant to KRS Chapter 13A as necessary to implement and administer its  
22 responsibilities under this section. These administrative regulations may include but  
23 are not limited to the assessment of fines, penalties, or sanctions for noncompliance.
- 24 (8) The Department for Medicaid Services may consider any information ascertained  
25 pursuant to this section in the setting, creation, or approval of reimbursement rates  
26 used by a pharmacy benefit manager or an entity which contracts on behalf of a  
27 pharmacy.



1 (9) The Department for Medicaid Services shall not:

2 (a) Approve any contract subject to this section that:

3 1. In the case of any invoice audit or other audit to determine  
4 reimbursement eligibility of a pharmacy, refuses to accept as valid any  
5 invoices from any wholesaler licensed by the Kentucky Board of  
6 Pharmacy from which the pharmacy has purchased prescription  
7 drugs; or

8 2. Requires that any wholesaler licensed by the Kentucky Board of  
9 Pharmacy hold any third-party accreditation or certification as:

10 a. A condition of reimbursement eligibility of a pharmacy; or

11 b. A requirement to validate a pharmacy invoice; or

12 (b) If administering medical assistance reimbursement of pharmacies directly,  
13 impose any of the requirements under paragraph (a) of this subsection.