

1 AN ACT relating to pharmacy benefits in the Medicaid program.

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

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO
4 READ AS FOLLOWS:

5 (1) (a) Notwithstanding KRS 205.647 or any other state law, and except as
6 provided pursuant to subsection (6) of this section, after the effective date of
7 this Act the Department for Medicaid Services shall directly administer all
8 outpatient pharmacy benefits for all Medicaid members.

9 (b) For the purposes of this section, "directly administer" includes a
10 requirement that the Department for Medicaid Services by administrative
11 regulation shall create an outpatient pharmacy benefits program that
12 includes:

13 1. A formulary;

14 2. Reimbursement methodologies that may include the maximum
15 allowable cost as defined in KRS 304.17A-161(3) for drugs dispensed
16 for outpatient services for managed care; and

17 3. A dispensing fee as provided in subsection (2) of this section;
18 that shall be used by any third-party administrator performing services on
19 behalf of the Department for Medicaid Services pursuant to this section.

20 (2) The Department for Medicaid Services shall promulgate an administrative
21 regulation establishing reasonable dispensing fees pursuant to guidance or
22 guidelines from the federal Centers for Medicare and Medicaid Services.

23 (3) (a) The Department for Medicaid Services may contract with a third party on a
24 fee-for-service reimbursement model for the purpose of administration of
25 pharmacy benefits; however, these services shall be approved by the
26 department. The Department for Medicaid Services shall ensure
27 coordination of care between the third-party administrator or the outpatient

1 pharmacy benefits program and managed care organizations as a
2 consideration in any contracts established pursuant to this section. Any
3 managed care techniques, principles, or administration of benefits utilized
4 pursuant to this subsection shall comply with Kentucky law.

5 (b) The following shall apply to contracts between entities contracting relating
6 to third-party administrators and pharmacies:

7 1. The Department for Medicaid Services shall approve any contract
8 between a third-party administrator and a pharmacy;

9 2. A third-party administrator shall not change the terms of a contract
10 between a third-party administrator and a pharmacy without written
11 approval by the Department for Medicaid Services; and

12 3. A third-party administrator shall not create, modify, implement, or
13 indirectly establish any fee on a pharmacy, pharmacist, or a Medicaid
14 recipient without written approval by the Department for Medicaid
15 Services.

16 (4) A contract to provide managed care shall not be renewed or negotiated if it
17 provides for the administration of outpatient pharmacy benefits for Medicaid
18 members by an entity other than the Department for Medicaid Services, except as
19 provided pursuant to subsections (3) and (6) of this section.

20 (5) All Medicaid managed care contracts with Medicaid managed care organizations
21 or pharmacy benefit managers that are entered into or negotiated after the
22 effective date of this Act shall be reduced in amount by at least the cost of all
23 outpatient pharmacy benefits, except those benefits described pursuant to
24 subsection (6) of this Act, within the contract or master agreement to administer
25 the Medicaid program that was in operation as of January 1, 2017.

26 (6) The provisions of this section shall not apply to outpatient pharmacy services
27 provided by a health care facility registered as a covered entity pursuant to 42

1 U.S.C. sec. 256b or any pharmacy owned by or contracted with the covered entity.
 2 A Medicaid managed care organization, either directly or through a pharmacy
 3 benefit manager, shall administer and reimburse outpatient pharmacy claims
 4 submitted by a health care facility registered as a covered entity pursuant to 42
 5 U.S.C. sec. 256b, its owned pharmacies and contracted pharmacies in accordance
 6 with the contractual agreements the Medicaid managed care organization or its
 7 pharmacy benefit manager has with such facilities and pharmacies. A Medicaid
 8 managed care organization or its pharmacy benefit manager shall not exclude
 9 any health care facility registered as a covered entity pursuant to 42 U.S.C. sec.
 10 256b from its pharmacy network.

11 (7) On at least an annual basis, the Medicaid commissioner shall update the Interim
 12 Joint Committee on Health and Welfare and Family Services and the Interim
 13 Joint Committee on Banking and Insurance, relating to any contract, contract
 14 issues, formulary, dispensing fees, and maximum allowable cost concerns
 15 regarding a third-party administrator and managed care.

16 ➔Section 2. KRS 205.647 is amended to read as follows:

17 (1) As used in this section, "pharmacy benefit manager" has the same meaning as in
 18 KRS 304.9-020.

19 (2) A pharmacy benefit manager contracted with a managed care organization that
 20 provides Medicaid benefits pursuant to this chapter shall comply with the
 21 provisions of this section and KRS 304.9-053, 304.9-054, 304.9-055, and 304.17A-
 22 162.

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

25 (4) A pharmacy benefit manager shall notify the cabinet in writing of any activity,
 26 policy, or practice of the pharmacy benefit manager that directly or indirectly
 27 presents a conflict of interest that interferes with the discharge of the pharmacy

1 benefit manager's duty to a managed care organization to exercise its contractual
2 duties.

3 (5) A pharmacy benefit manager shall, upon request, disclose to the cabinet the
4 following information:

5 (a) The percentage of claims payments made by the pharmacy benefit manager
6 to pharmacies owned, managed, or controlled by the pharmacy benefit
7 manager, or any of the pharmacy benefit manager's management
8 companies, parent companies, subsidiary companies, jointly held
9 companies, or companies otherwise affiliated by a common owner,
10 manager, or holding company for the previous year;

11 (b) The aggregate amount of the fees or assessments imposed on, or collected
12 from, pharmacy providers; and

13 (c) The average annualized percentage of revenue collected by the pharmacy
14 benefit manager as a result of each contract it has executed with a managed
15 care organization contracted by the cabinet to provide Medicaid benefits
16 which is not paid by the pharmacy benefit manager to pharmacy providers
17 and pharmaceutical manufacturers or labelers, or in order to perform
18 administrative functions pursuant to its contracts with managed care
19 organizations.

20 (6) The information disclosed pursuant to subsection (5) of this section shall include
21 all retail, mail order, specialty, and compounded prescription products. This
22 information shall be excluded from the application of KRS 61.870 to 61.884 in
23 accordance with KRS 61.878(1)(c).

24 (7) A pharmacy benefit manager shall disclose directly in writing to a pharmacy
25 provider contracting with the pharmacy benefit manager of any material change
26 to a contract provision that affects the terms of the reimbursement, the process
27 for verifying benefits and eligibility, dispute resolution, procedures for verifying

1 drugs included on the formulary, and contract termination at least thirty (30)
2 days prior to the date of the change to the provision.

3 (8) A pharmacy benefit manager shall not include the following in a contract with a
4 pharmacy provider:

5 (a) A provision prohibiting the provider from informing a patient of a less
6 costly alternative to a prescribed medication; or

7 (b) A provision that prohibits the provider from dispensing a particular amount
8 of a prescribed medication, if the pharmacy benefit manager allows that
9 amount to be dispensed through a pharmacy owned or controlled by the
10 pharmacy benefit manager, unless the prescription drug is subject to
11 restricted distribution by the United States Food and Drug Administration,
12 or requires special handling, provider coordination, or patient education
13 that cannot be provided by a retail pharmacy.

14 (9) Nothing in this section shall be construed to prohibit a pharmacy benefit
15 manager from requiring the same reimbursement and terms and conditions for a
16 pharmacy provider as for a pharmacy owned, controlled, or otherwise associated
17 with the pharmacy benefit manager.

18 (10) A pharmacy benefit manager shall establish and implement a process for the
19 resolution of disputes arising out of this section, which shall be approved by the
20 cabinet.

21 ➔Section 3. Section 1 of this Act takes effect January 1, 2019.