

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. KRS 205.647 is amended to read as follows:

- 5 (1) As used in this section, "pharmacy benefit manager" has the same meaning as in
6 KRS 304.9-020.
- 7 (2) A pharmacy benefit manager contracted with a managed care organization that
8 provides Medicaid benefits pursuant to this chapter shall comply with the
9 provisions of this section and KRS 304.9-053, 304.9-054, 304.9-055, and 304.17A-
10 162.
- 11 (3) KRS 304.17A-162(10), (11), (12), and (13) shall not apply to a pharmacy benefit
12 manager contracted directly with the cabinet to provide Medicaid benefits.

13 **(4) A pharmacy benefit manager contracting with a managed care organization to**
14 **administer Medicaid benefits shall provide the following information to the**
15 **Department for Medicaid Services no later than August 15, 2018, and for each**
16 **year thereafter that the pharmacy benefit manager is contracted with a managed**
17 **care organization to administer Medicaid benefits:**

18 **(a) The total Medicaid dollars paid to the pharmacy benefit manager by a**
19 **managed care organization and the total amount of Medicaid dollars paid**
20 **to the pharmacy benefit manager by a managed care organization which**
21 **were not subsequently paid to a pharmacy licensed in Kentucky;**

22 **(b) 1. The average reimbursement, by drug ingredient cost, dispensing fee,**
23 **and any other fee paid by a pharmacy benefit manager to licensed**
24 **pharmacies with which the pharmacy benefit manager shares**
25 **common ownership, management, or control; or which are owned,**
26 **managed, or controlled by any of the pharmacy benefit manager's**
27 **management companies, parent companies, subsidiary companies,**

1 jointly held companies, or companies otherwise affiliated by a
2 common owner, manager, or holding company; or which share any
3 common members on the board of directors; or which share managers
4 in common.

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

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

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

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

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

27 (g) Any direct or indirect fees, charges, or any kind of assessments imposed by

- 1 the pharmacy benefit manager on pharmacies licensed in Kentucky which
2 operate ten (10) or fewer locations; and
- 3 (h) All common ownership, management, common members of a board of
4 directors, shared managers, or control of a pharmacy benefit manager, or
5 any of the pharmacy benefit manager's management companies, parent
6 companies, subsidiary companies, jointly held companies, or companies
7 otherwise affiliated by a common owner, manager, or holding company
8 with any managed care organization contracted to administer Kentucky
9 Medicaid benefits, any entity which contracts on behalf of a pharmacy, or
10 any pharmacy services administration organization, or any common
11 ownership, management, common members of a board of directors, shared
12 managers, or control of a pharmacy services administration organization
13 that is contracted with a pharmacy benefit manager, with any drug
14 wholesaler or distributor or any of the pharmacy services administration
15 organizations, management companies, parent companies, subsidiary
16 companies, jointly held companies, or companies otherwise affiliated by a
17 common owner, common members of a board of directors, manager, or
18 holding company.
- 19 (5) All information provided by a pharmacy benefit manager pursuant to subsection
20 (4) of this section shall reflect data for the most recent full calendar year and
21 shall be divided by month. This information shall be managed by the Department
22 for Medicaid Services in accordance with applicable law and shall be exempt
23 from KRS 61.870 to 61.884 in accordance with KRS 61.878(1)(c).
- 24 (6) Any contract entered into or renewed for the delivery of Medicaid services by a
25 managed care organization on or after the effective date of this Act shall comply
26 with the following requirements:
- 27 (a) The Department for Medicaid Services shall set, create, or approve, and

1 may change at any time for any reason, reimbursement rates between a
2 pharmacy benefit manager and a contracted pharmacy, or an entity which
3 contracts on behalf of a pharmacy. Reimbursement rates shall include
4 dispensing fees which take into account applicable guidance by the Center
5 for Medicare and Medicaid Services. A pharmacy benefit manager shall
6 notify the Department for Medicaid Services thirty (30) days in advance of
7 any proposed change of over five percent (5%) in the product
8 reimbursement rates for a pharmacy licensed in Kentucky. The Department
9 for Medicaid Services may disallow the change within thirty (30) days of
10 this notification;

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

14 (c) The Department for Medicaid Services shall approve any contract between
15 the managed care organization and a pharmacy benefit manager;

16 (d) The Department for Medicaid Services shall approve any contract, any
17 change in the terms of a contract, or suspension or termination of a
18 contract between a pharmacy benefit manager contracted with a managed
19 care organization to administer Medicaid benefits and an entity which
20 contracts on behalf of a pharmacy, or any contract or any change in the
21 terms of a contract, or any suspension or termination of a contract between
22 a pharmacy benefit manager and a pharmacy or pharmacist; and

23 (e) Any fee established, modified, or implemented directly or indirectly by a
24 managed care organization, pharmacy benefit manager, or entity which
25 contracts on behalf of a pharmacy that is directly or indirectly charged to,
26 passed onto, or required to be paid by a pharmacy services administration
27 organization, pharmacy, or Medicaid recipient shall be submitted to the

1 Department for Medicaid Services for approval. This paragraph shall not
2 apply to any membership fee or service fee established, modified, or
3 implemented by a pharmacy services administration organization on a
4 pharmacy licensed in Kentucky that is not directly or indirectly related to
5 product reimbursement.

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

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

15 ➔Section 2. KRS 304.9-440 is amended to read as follows:

16 (1) The commissioner may place on probation, suspend, or may impose conditions
17 upon the continuance of a license for not more than twenty-four (24) months,
18 revoke, or refuse to issue or renew any license issued under this subtitle or any
19 surplus lines broker, life settlement broker, or life settlement provider license, or
20 may levy a civil penalty in accordance with KRS 304.99-020, or any combination of
21 actions for any one (1) or more of the following causes:

22 (a) Providing incorrect, misleading, incomplete, or materially untrue information
23 in the license application;

24 (b) Violating any insurance laws, or violating any administrative regulations,
25 subpoena, or order of the commissioner or of another state's insurance
26 commissioner;

27 (c) Obtaining or attempting to obtain a license through misrepresentation or

- 1 fraud;
- 2 (d) Improperly withholding, misappropriating, or converting any moneys or
3 properties received in the course of doing insurance or the business of life
4 settlements;
- 5 (e) Intentionally misrepresenting the terms of an actual or proposed insurance
6 contract, life settlement contract, or application for insurance;
- 7 (f) Having been convicted of or having pled guilty or nolo contendere to any
8 felony;
- 9 (g) Having admitted or been found to have committed any unfair insurance trade
10 practice, insurance fraud, or fraudulent life settlement act;
- 11 (h) Using fraudulent, coercive, or dishonest practices; or demonstrating
12 incompetence, untrustworthiness, or financial irresponsibility; or being a
13 source of injury or loss to the public in the conduct of business in this state or
14 elsewhere;
- 15 (i) Having an insurance license, life settlement license, or its equivalent, denied,
16 suspended, or revoked in any other state, province, district, or territory;
- 17 (j) Surrendering or otherwise terminating any license issued by this state or by
18 any other jurisdiction, under threat of disciplinary action, denial, or refusal of
19 the issuance of or renewal of any other license issued by this state or by any
20 other jurisdiction; or revocation or suspension of any other license held by the
21 licensee issued by this state or by any other jurisdiction;
- 22 (k) Forging another's name to an application for insurance, to any other document
23 related to an insurance transaction, or to any document related to the business
24 of life settlements;
- 25 (l) Cheating, including improperly using notes or any other reference material to
26 complete an examination for license;
- 27 (m) Knowingly accepting insurance or life settlement business from an individual

- 1 or business entity who is not licensed, but who is required to be licensed under
2 this subtitle;
- 3 (n) Failing to comply with an administrative or court order imposing a child
4 support obligation;
- 5 (o) Failing to pay state income tax or to comply with any administrative or court
6 order directing payment of state income tax;
- 7 (p) Having been convicted of a misdemeanor for which restitution is ordered in
8 excess of three hundred dollars (\$300), or of any misdemeanor involving
9 dishonesty, breach of trust, or moral turpitude;
- 10 (q) Failing to no longer meet the requirements for initial licensure;
- 11 (r) If a life settlement provider, demonstrating a pattern of unreasonable
12 payments to owners or failing to honor contractual obligations set out in a life
13 settlement contract;
- 14 (s) Entering into any life settlement contract or using any form that has not been
15 approved pursuant to Subtitle 15 of this chapter;
- 16 (t) If a licensee, having assigned, transferred, or pledged a policy subject to a life
17 settlement contract to a person other than a life settlement provider licensed in
18 this state, an accredited investor or qualified institutional buyer as defined,
19 respectively, in Regulation D, Rule 501 or Rule 144a of the Federal Securities
20 Act of 1933, as amended, a financing entity, a special purpose entity, or a
21 related provider trust; or
- 22 (u) Any other cause for which issuance of the license could have been refused,
23 had it then existed and been known to the commissioner.
- 24 (2) The license of a business entity may be suspended, revoked, or refused for any
25 cause relating to an individual designated in or registered under the license if the
26 commissioner finds that an individual licensee's violation was known or should
27 have been known by one (1) or more of the partners, officers, or managers acting on

1 behalf of the business entity and the violation was not reported to the Department of
2 Insurance nor corrective action taken.

3 (3) *The license of a pharmacy benefit manager may, in the discretion of the*
4 *commissioner, be suspended, revoked, or refused for any cause enumerated in*
5 *subsection (1) of this section, and for violations of Section 1 of this Act, KRS*
6 *304.9-053, 304.9-054, 304.9-055, and 304.17A-162. The pharmacy benefit*
7 *manager shall also be subject to the same civil penalties under KRS 304.99-020*
8 *as an insurer.*

9 (4) The applicant or licensee may make written request for a hearing in accordance with
10 KRS 304.2-310.

11 ~~(5)~~[(4)] The commissioner shall retain the authority to enforce the provisions and
12 penalties of this chapter against any individual or business entity who is under
13 investigation for or charged with a violation of this chapter, even if the individual's
14 or business entity's license has been surrendered or has lapsed by operation of law.

15 ~~(6)~~[(5)] The commissioner may suspend, revoke, or refuse to renew the license of a
16 licensed insurance agent operating as a life settlement broker, pursuant to KRS
17 304.15-700, if the commissioner finds that such insurance agent has violated the
18 provisions of KRS 304.15-700 to 304.15-725.

19 ~~(7)~~[(6)] If the commissioner denies a license application or suspends, revokes, or
20 refuses to renew the license of a life settlement provider or life settlement broker, or
21 suspends, revokes, or refuses to renew the license of a licensed life insurance agent
22 operating as a life settlement broker pursuant to KRS 304.15-700, the commissioner
23 shall comply with the provisions of this section and KRS Chapter 13B.

24 ➔Section 3. Whereas there is an urgent need for government agencies to have
25 transparency and to better assess contracts between entities providing Medicaid pharmacy
26 benefits with public dollars, an emergency is declared to exist, and this Act takes effect
27 on July 1, 2018.