

Kentucky, Ohio actions improve Medicaid reimbursement transparency

06 Apr 04:21 PM

The Kentucky legislature has enacted Senate Bill 5, which requires PBMs to make certain disclosures, including the amount paid by the MCO to the PBM and the portion of that amount that is subsequently paid to pharmacies. The bill also gives the Department of Medicaid Services the authority to set reimbursement rates between a PBM and a contracted pharmacy, thus ensuring pharmacies are reimbursed fairly. The bill was introduced by Sen. Max Wise (R) and supported by the Kentucky Pharmacists Association.

In Ohio, state Medicaid officials have announced plans to investigate claims that PBMs are increasing Medicaid costs by charging the state more for prescription claims than they are reimbursing pharmacies for filling the prescriptions. If the allegations are true, the state is prepared to hand down sanctions. The state Medicaid agency has asked all five managed care companies that contract with the state Medicaid program to provide data showing how much they paid their PBMs and how much the PBMs paid pharmacies to fill prescriptions during a 12-month period ending March 31.

"We salute Ohio Gov. John Kasich for his pro-consumer, pro-competition leadership on this issue, as well as Kentucky Sen. Max Wise for his diligence in passing disclosure legislation in that state," said NCPA CEO B. Douglas Hoey, Pharmacist, MBA. "The transparency and information these actions provide are what the marketplace needs to help make prescription medications more affordable."

Pharmacy benefit manager bill goes to governor

🕒 April 3, 2018 👁 276 Views



FRANKFORT, Ky. (April 3, 2018) – The state Senate gave final passage today to a bill intended to ensure independent pharmacists are fairly reimbursed for filling prescriptions of Medicaid recipients.

Senate Bill 5, as amended by the House, would make the Kentucky Department for Medicaid Services in charge of setting the reimbursement rates for a pharmacist. The rate is currently set by pharmacy-benefit managers (PBMs) hired by the state's Medicaid managed-care organizations (MCOs).

"As many of you know, the Kentucky legislature has spent an inordinate amount of time over the

past several sessions of the General Assembly trying to play the role of policeman between PBMs and pharmacists," said Sen. Max Wise, R-Campbellsville, who sponsored the legislation. "The (amendment) gives the Kentucky Medicaid department clear authority to police pricing terms and contracts while we are not in session."

He said Kentucky Medicaid spends \$1.7 billion annually on prescriptions and SB 5 would help authorities track that money and determine whether locally-owned pharmacies were being reimbursed fairly.

Another provision would allow the state Medicaid and insurance departments to issue penalties if a PBM fails to comply with the legislation.

"This bill ... truly is a very transparent bill," Wise said, adding SB 5 may become a model for the nation.

Independent pharmacies in several states have claimed in recent months that PBMs owned by national pharmacy chains are not fairly reimbursing them. The dominate PBM in Kentucky, for example, is only paying independent pharmacists a professional dispensing fee of 85 cents per prescription, Wise said. The Centers for Medicare and Medicaid Services states that fee should be around \$10.64, plus the cost of the drug being dispensed.

The measure passed by a 37-0 vote.

Tags

medicaid

pharmacist

pharmacy



Kentucky Legislature

SB5

18RS

WWW Version

The hyperlink to a bill draft that precedes a summary contains the most recent version (Introduced/GA/Enacted) of the bill. If the session has ended, the hyperlink contains the latest version of the bill at the time of sine die adjournment. Note that the summary pertains to the bill as introduced, which is often different from the most recent version.

SB 5/FN (BR 216) - M. Wise, R. Alvarado, J. Bowen, J. Carpenter, D. Carroll, C. Embry Jr., R. Girdler, P. Hornback, S. Meredith, R. Thomas, S. West, M. Wilson

AN ACT relating to pharmacy benefits in the Medicaid program.

Create a new section of KRS Chapter 205 to require the Department for Medicaid Services to directly administer all outpatient pharmacy benefits; prohibit renewal or negotiation of new contracts to provide Medicaid managed care that allow administration of outpatient benefits by any entity but the Department for Medicaid Services; reduce costs of future Medicaid managed care contracts by costs of all outpatient pharmacy benefits as they existed on January 1, 2017; allow the department to utilize managed care principles and techniques to assist with member medication adherence and cost control; require the department to establish a reasonable dispensing fee pursuant to Centers for Medicare and Medicaid Services guidelines; EFFECTIVE January 1, 2019.

AMENDMENTS

SB 5 (As Introduced)

SCS1 - Delete original provisions; create a new section of KRS Chapter 205 to require the Department for Medicaid Services to directly administer all outpatient pharmacy benefits and authorize the DMS to use a third party to administer certain benefits; require the department to establish a reasonable dispensing fee pursuant to Centers for Medicare and Medicaid Services guidelines; clarify how future contracts between third party administrators and pharmacies are required to operate; prohibit renewal or negotiation of new contracts to provide Medicaid

managed care that allow administration of outpatient benefits by any entity but the Department for Medicaid Services; reduce costs of future Medicaid managed care contracts by costs of all outpatient pharmacy benefits as they existed on January 1, 2017; exempt certain covered entities and contracted pharmacies operating under 42 U.S.C. section 256b; allow the department to utilize managed care principles and techniques to assist with member medication adherence and cost control; require an annual update from the commissioner of Medicaid relating to contracts, contract issues, formularies, dispensing fees, and maximum allowable cost concerns relating to third party administrators and managed care; amend KRS 205.647 to include additional requirements on pharmacy benefit managers and reporting requirements to the Cabinet for Health and Family Services, including a requirement to inform the CHFS about all potential conflicts of interest, required disclosures to the CHFS relating to contracts with pharmaceutical manufacturers, percentage of claims payments made to pharmacies owned, managed, or controlled by the PBM; aggregate amount of any fees or assessments imposed on or collected from pharmacy providers; require information to include all retail, mail order, specialty, and compounded prescription products; require direct disclosure by a PBM to a pharmacy provider of any material changes to a contract affecting terms of reimbursement, process for verifying benefits and eligibility, dispute resolution, and procedures for verifying drugs included on the formulary; prohibit certain provisions in PBM contracts with pharmacy providers including prohibiting the provider from informing a patient of a less costly alternative to a prescribed medication, prohibiting a provider from dispensing a particular amount of a prescribed medication if the PBM allows that amount to be prescribed through a pharmacy owned or controlled by that PBM; clarify that this section does not require additional reimbursement, terms, and conditions for a pharmacy provider as for a pharmacy owned, controlled, or otherwise associated with the PBM; require a PBM to establish and implement a process for the resolution of disputes arising out of KRS 205.647; make Section 1 EFFECTIVE January 1, 2019.

SFA1(M. Wise) - Retain provisions of the Senate Committee Substitute, except remove a provision requiring pharmacy benefit managers to disclose certain agreements with pharmaceutical manufacturers.

HCS1 - Delete provisions of the GA version; amend KRS 205.647 to require that a pharmacy benefit manager contracting with an MCO provide information to the Department for Medicaid that includes the total amount paid to it by the MCO, and the total amount paid to it by an MCO which was not subsequently paid to a Kentucky licensed pharmacy; require information about the average reimbursement paid by the PBM to licensed pharmacies with which it is affiliated, the average reimbursement paid to pharmacies with more than 10 locations, and the average reimbursement paid to PBMs with 10 or fewer locations; require reporting of any fees, charges, or other assessments required to be paid by a pharmacy with which it is affiliated, and any fees, charges, or other assessments required to be paid by pharmacies with 10 or fewer locations, and pharmacies

with 10 or more locations; require reporting of all common ownership, shared managers, common members of boards of directors or of parent companies, subsidiary companies, or jointly held companies; require data to be for the most recent full calendar year and divided by month, exempt from Open Records Act as necessary; establish requirements for MCO contracts, including the authority of the DMS to set, create, or approve reimbursement rates, give authority to change rates at any time for any reason; require reimbursement rates to include dispensing fees which use applicable guidance by the CMS; require notification to DMS by a PBM of any proposed change of over 5% in product reimbursement rates and allow DMS to disallow changes; establish DMS' authority to regulate maximum allowable cost; require DMS to approve any contract between an MCO and a PBM; require DMS to approve any contract, change in terms of a contract, suspension, or termination of a contract between a PBM, an entity contracting on behalf of a pharmacy, or a pharmacy, or pharmacist; require DMS to approve any fee established by an MCO, PBM, or contracting entity on a pharmacy, pharmacist, or Medicaid recipient; allow DMS to promulgate administrative regulations and utilize information ascertained in setting, creating, or approving reimbursement rates; amend KRS 304.9-440 to allow the Department of Insurance to suspend, revoke, or refuse a license to a PBM for referenced violations; establish that a PBM is subject to the same penalties as an insurer; EMERGENCY.

HCA1(B. Rowland) - Clarify the authority of DMS to approve fees implemented by an MCO, PBM, or contracting entity on a PSAO, pharmacy, or Medicaid recipient.

HCA2(B. Rowland) - Make title amendment.

HFA1(B. Rowland) - Clarify the authority of DMS to approve fees implemented by an MCO, PBM, or contracting entity on a PSAO, pharmacy, or Medicaid recipient.

HFA2(B. Rowland) - Clarify the authority of DMS to approve fees implemented by an MCO, PBM, or contracting entity on a PSAO, pharmacy, or Medicaid recipient; remove the authority for DMS to conduct licensure suspension or revocation.

Sep 25, 2017 - Prefiled by the sponsor(s).

Jan 02, 2018 - introduced in Senate

Jan 03, 2018 - to Health & Welfare (S)

Feb 14, 2018 - reported favorably, 1st reading, to Calendar with Committee Substitute (1)

Feb 15, 2018 - 2nd reading, to Rules

Feb 16, 2018 - floor amendment (1) filed to Committee Substitute

Feb 28, 2018 - posted for passage in the Regular Orders of the Day for Thursday, March 1, 2018

Mar 01, 2018 - 3rd reading, passed 32-4 with Committee Substitute (1) floor amendment (1)

Mar 02, 2018 - received in House
Mar 06, 2018 - to Banking & Insurance (H)
Mar 13, 2018 - posted in committee
Mar 15, 2018 - taken from Banking & Insurance (H); 1st reading; returned to Banking & Insurance (H)
Mar 16, 2018 - reported favorably, 2nd reading, to Rules with Committee Substitute and committee amendments (1) and (2-title); floor amendment (1) filed to Committee Substitute
Mar 19, 2018 - posted for passage in the Regular Orders of the Day for Tuesday, March 20, 2018
Mar 20, 2018 - floor amendment (2) filed to Committee Substitute; 3rd reading, passed 97-0 with Committee Substitute, committee amendment (2-title), and floor amendment (2)
Mar 21, 2018 - received in Senate
Mar 22, 2018 - posted for passage for concurrence in House Committee Substitute, committee amendments (2-title) & floor amendment (2)
Mar 27, 2018 - passed over and retained in the Concurrence Orders of the Day
Mar 29, 2018 - passed over and retained in the Concurrence Orders of the Day
Apr 02, 2018 - Senate concurred in House Committee Substitute (1), committee amendment (2-title) and floor amendment (2); Bill passed 37-0; enrolled, signed by President of the Senate; enrolled, signed by Speaker of the House; delivered to Governor

[Vote History](#)

[Legislature Home Page](#) | [Legislation & Legislative Record](#)
