

**205.647 Pharmacy benefit managers providing Medicaid benefits -- Annual reports to Department for Medicaid Services -- Requirements for Medicaid services contracts entered into or renewed on or after July 1, 2018 -- Reimbursement rates between pharmacy benefit manager and contracted pharmacy.**

- (1) As used in this section, "pharmacy benefit manager" has the same meaning as in KRS 304.9-020.
- (2) A pharmacy benefit manager contracted with a managed care organization that provides Medicaid benefits pursuant to this chapter shall comply with the provisions of this section and KRS 304.9-053, 304.9-054, 304.9-055, and 304.17A-162.
- (3) KRS 304.17A-162(10), (11), (12), and (13) shall not apply to a pharmacy benefit manager contracted directly with the cabinet to provide Medicaid benefits.
- (4) A pharmacy benefit manager contracting with a managed care organization to administer Medicaid benefits shall provide the following information to the Department for Medicaid Services no later than August 15, 2018, and for each year thereafter that the pharmacy benefit manager is contracted with a managed care organization to administer Medicaid benefits:
  - (a) The total Medicaid dollars paid to the pharmacy benefit manager by a managed care organization and the total amount of Medicaid dollars paid to the pharmacy benefit manager by a managed care organization which were not subsequently paid to a pharmacy licensed in Kentucky;
  - (b)
    1. The average reimbursement, by drug ingredient cost, dispensing fee, and any other fee paid by a pharmacy benefit manager to licensed pharmacies with which the pharmacy benefit manager shares common ownership, management, or control; or which are owned, managed, or controlled by any of the pharmacy benefit manager's management companies, parent companies, subsidiary companies, jointly held companies, or companies otherwise affiliated by a common owner, manager, or holding company; or which share any common members on the board of directors; or which share managers in common.
    2. For the purposes of this subsection, "average reimbursement" means a statistical methodology selected by the Department for Medicaid Services via any administrative regulations promulgated pursuant to this section which shall include, at a minimum, the median and mean;
  - (c) The average reimbursement, by drug ingredient cost, dispensing fee, and any other fee, paid by a pharmacy benefit manager to pharmacies licensed in Kentucky which operate more than ten (10) locations;
  - (d) The average reimbursement by drug ingredient cost, dispensing fee, and any other fee, paid by a pharmacy benefit manager to pharmacies licensed in Kentucky which operate ten (10) or fewer locations;
  - (e) Any direct or indirect fees, charges, or any kind of assessments imposed by the pharmacy benefit manager on pharmacies licensed in Kentucky with which the pharmacy benefit manager shares common ownership,

management, or control; or which are owned, managed, or controlled by any of the pharmacy benefit manager's management companies, parent companies, subsidiary companies, jointly held companies, or companies otherwise affiliated by a common owner, manager, or holding company; or which share any common members on the board of directors; or which share managers in common;

- (f) Any direct or indirect fees, charges, or any kind of assessments imposed by the pharmacy benefit manager on pharmacies licensed in Kentucky which operate more than ten (10) locations;
  - (g) Any direct or indirect fees, charges, or any kind of assessments imposed by the pharmacy benefit manager on pharmacies licensed in Kentucky which operate ten (10) or fewer locations; and
  - (h) All common ownership, management, common members of a board of directors, shared managers, or control of a pharmacy benefit manager, or any of the pharmacy benefit manager's management companies, parent companies, subsidiary companies, jointly held companies, or companies otherwise affiliated by a common owner, manager, or holding company with any managed care organization contracted to administer Kentucky Medicaid benefits, any entity which contracts on behalf of a pharmacy, or any pharmacy services administration organization; or any common ownership, management, common members of a board of directors, shared managers, or control of a pharmacy services administration organization that is contracted with a pharmacy benefit manager, with any drug wholesaler or distributor or any of the pharmacy services administration organization's management companies, parent companies, subsidiary companies, jointly held companies, or companies otherwise affiliated by a common owner, common members of a board of directors, manager, or holding company.
- (5) All information provided by a pharmacy benefit manager pursuant to subsection (4) of this section shall reflect data for the most recent full calendar year and shall be divided by month. This information shall be managed by the Department for Medicaid Services in accordance with applicable law and shall be exempt from KRS 61.870 to 61.884 in accordance with KRS 61.878(1)(c).
- (6) Any contract entered into or renewed for the delivery of Medicaid services by a managed care organization on or after July 1, 2018, shall comply with the following requirements:
- (a) The Department for Medicaid Services shall set, create, or approve, and may change at any time for any reason, reimbursement rates between a pharmacy benefit manager and a contracted pharmacy, or an entity which contracts on behalf of a pharmacy. Reimbursement rates shall include dispensing fees which take into account applicable guidance by the Center for Medicare and Medicaid Services. A pharmacy benefit manager shall notify the Department for Medicaid Services thirty (30) days in advance of any proposed change of over five percent (5%) in the product reimbursement rates for a pharmacy licensed in Kentucky. The Department for Medicaid Services may disallow

- the change within thirty (30) days of this notification;
- (b) All laws and administrative regulations promulgated by the Department for Medicaid Services, including but not limited to the regulation of maximum allowable costs;
  - (c) The Department for Medicaid Services shall approve any contract between the managed care organization and a pharmacy benefit manager;
  - (d) The Department for Medicaid Services shall approve any contract, any change in the terms of a contract, or suspension or termination of a contract between a pharmacy benefit manager contracted with a managed care organization to administer Medicaid benefits and an entity which contracts on behalf of a pharmacy, or any contract or any change in the terms of a contract, or any suspension or termination of a contract between a pharmacy benefit manager and a pharmacy or pharmacist; and
  - (e) Any fee established, modified, or implemented directly or indirectly by a managed care organization, pharmacy benefit manager, or entity which contracts on behalf of a pharmacy that is directly or indirectly charged to, passed onto, or required to be paid by a pharmacy services administration organization, pharmacy, or Medicaid recipient shall be submitted to the Department for Medicaid Services for approval. This paragraph shall not apply to any membership fee or service fee established, modified, or implemented by a pharmacy services administration organization on a pharmacy licensed in Kentucky that is not directly or indirectly related to product reimbursement.
- (7) The Department for Medicaid Services may promulgate administrative regulations pursuant to KRS Chapter 13A as necessary to implement and administer its responsibilities under this section. These administrative regulations may include but are not limited to the assessment of fines, penalties, or sanctions for noncompliance.
- (8) The Department for Medicaid Services may consider any information ascertained pursuant to this section in the setting, creation, or approval of reimbursement rates used by a pharmacy benefit manager or an entity which contracts on behalf of a pharmacy.

**Effective:** July 1, 2018

**History:** Amended 2018 Ky. Acts ch. 157, sec. 1, effective July 1, 2018. -- Created 2016 Ky. Acts ch. 79, sec. 7, effective July 15, 2016.

**2018-2020 Budget Reference.** See State/Executive Branch Budget, 2018 Ky. Acts ch. 169, Pt. I, G, 3, b, (15) at 1321.