

State of Kansas
Insurance Department
Notice of Public Hearing on Proposed Administrative Regulation
July 18, 2023

A public hearing will be conducted on Tuesday, July 18, 2023, at 8:30 a.m. at the Kansas Insurance Department, 1300 SW Arrowhead Road, Topeka, Kansas, to consider the adoption of a proposed rule and regulation of the Insurance Department on a permanent basis. Anyone desiring to participate via teleconference or virtual format should visit the Insurance Department's website <https://insurance.kansas.gov/legal-issues/> for information on registering.

This 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written public comments on the proposed rule and regulation. All interested parties may submit written comments prior to the hearing to the Kansas Insurance Department, 1300 SW Arrowhead Road, Topeka, Kansas 66604 or by email to KID.publiccomment@ks.gov. All interested parties will be given a reasonable opportunity to present their views orally regarding the adoption of the proposed regulation during the public hearing. In order to provide all parties an opportunity to present their views, it may be necessary to request that each participant limit any oral presentation to five (5) minutes.

Any individual with a disability may request an accommodation in order to participate in the public hearing and may request the proposed regulation and economic impact statement in an accessible format. Requests for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting Bobbi Mariani at (785) 296-7802 or bobbi.mariani@ks.gov or the Kansas Relay Center at 1-800-766-3777. The west entrance to the Insurance Department is accessible. Handicapped parking is located on the west side of the Insurance Department.

Copies of the proposed regulation and the Economic Impact Statement for the proposed regulation can be viewed at the following website: <https://insurance.kansas.gov/legal-issues/>.

Summary of the proposed regulation and its economic impact follow. (Note: Statements indicating that a regulation is "not anticipated to have any economic impact" are intended to indicate that no economic impact on the Insurance Department, other state agencies, state employees, or the general public has been identified.)

K.A.R. 40-1-54 – Pharmacy Benefits Manager; Network Adequacy Report. This is a new regulation that establishes the requirements for the network adequacy report pharmacy benefits manager applicants must submit to the Commissioner of Insurance. The regulation is required by statute. The Insurance Department does not anticipate any significant economic impact to this agency, other governmental agencies, or to the public as a result of the implementation of this regulation.

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40-1-54. Pharmacy benefits manager; network adequacy report. Each applicant for license to act as a pharmacy benefits manager shall submit a network adequacy report to the commissioner with the application that contains the following information:

- (a) The name and address of the pharmacy benefits manager;
- (b) the name, telephone number, and electronic-mail address of the contact person responsible for the license of the pharmacy benefits manager;
- (c) the name of each network administered in Kansas by the applicant;
- (d) the number of counties and a list of the counties in each service area;
- (e) the number of affiliated pharmacies in Kansas that are in the applicant's networks;
- (f) the number of independent pharmacies in Kansas that are in the applicant's networks;
- (g) the number of complaints submitted by pharmacies concerning the applicant's network that the applicant has received in the previous 12 months. "Complaints" shall include complaints submitted in writing, by phone, by electronic mail, or by other electronic means;
- (h) the number of complaints submitted by patients concerning the applicant's network that the applicant has received in the previous 12 months. "Complaints" shall include complaints submitted in writing, by phone, by electronic-mail, or by other electronic means; and
- (i) a written narrative that meets the following requirements:
 - (1) Describes the process for determining the reasonableness of patient access to a pharmacy based on distance from the patient's residence, including whether any affiliates are included in the calculation of distance between patient residence and pharmacy, and a description of how mail-order and physical store locations are factored into the reasonableness determination;

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(2) specifies whether the applicant's contracts require patients to use pharmacies that are directly or indirectly owned by the applicant and any requirements for new prescriptions, refills, or specialty drugs, regardless of days supply;

(3) specifies whether the applicant imposes limits, including quantity limits or refill limits, on an independent pharmacy's access to medications that differ from the limits imposed on the applicant's affiliates;

(4) specifies how the applicant's certification or accreditation requirements are used as a determinant of network participation;

(5) specifies how often certification or accreditation requirements are changed;

(6) specifies whether there are different standards for independent pharmacies and affiliates of the applicant and how these different standards are applied; and

(7) describes any subnetworks for specialty drugs. (Authorized by K.S.A. 2022 Supp. 40-3825; implementing K.S.A. 2022 Supp. 40-3823; effective P-_____.)

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Kansas Administrative Regulations Economic Impact Statement (EIS)

Kansas Insurance Department
Agency

Justin McFarland
Agency Contact

785-338-0959
Contact Phone Number

40-1-54
K.A.R. Number(s)

☒ Permanent ☐ Temporary

Is/Are the proposed rule(s) and regulation(s) mandated by the federal government as a requirement for participating in or implementing a federally subsidized or assisted program?

- ☐ Yes If yes, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration and the Attorney General. Budget approval is not required; however, the Division of the Budget will require submission of a copy of the EIS at the end of the review process.
- ☒ No If no, do the total annual implementation and compliance costs for the proposed rule(s) and regulation(s), calculated from the effective date of the rule(s) and regulation(s), exceed \$1.0 million over any two-year period through June 30, 2024, or exceed \$3.0 million over any two-year period on or after July 1, 2024 (as calculated in Section III, F)?
- ☐ Yes If yes, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration, the Attorney General, AND the Division of the Budget. The regulation(s) and the EIS will require Budget approval.
- ☒ No If no, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration and the Attorney General. Budget approval is not required; however, the Division of the Budget will require submission of a copy of the EIS at the end of the review process.

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Section I

Brief description of the proposed rule(s) and regulation(s).

K.A.R. 40-1-54 establishes the requirements for the network adequacy report PBM applicants must submit to the Commissioner of Insurance

Section II

Statement by the agency if the rule(s) and regulation(s) exceed the requirements of applicable federal law, and a statement if the approach chosen to address the policy issue(s) is different from that utilized by agencies of contiguous states or the federal government. *(If the approach is different or exceeds federal law, then include a statement of why the proposed Kansas rule and regulation is different.)*

Click here to enter agency response.

Section III

Agency analysis specifically addressing the following:

- A. The extent to which the rule(s) and regulation(s) will enhance or restrict business activities and growth;

The proposed regulation sets forth the requirements of the network adequacy report PBM applicants must submit to the Commissioner of Insurance. The regulation is required by statute and will not enhance or restrict business activities.

- B. The economic effect, including a detailed quantification of implementation and compliance costs, on the specific businesses, sectors, public utility ratepayers, individuals, and local governments that would be affected by the proposed rule(s) and regulation(s) and on the state economy as a whole;

There should be no economic effect due to implementation or compliance costs.

- C. Businesses that would be directly affected by the proposed rule(s) and regulation(s);

Persons seeking licensure as a PBM

- D. Benefits of the proposed rule(s) and regulation(s) compared to the costs;

The network adequacy report is required by statute. The report is confidential and will be used by the Commissioner to understand PBMs' network adequacy.

- E. Measures taken by the agency to minimize the cost and impact of the proposed rule(s) and regulation(s) on business and economic development within the State of Kansas, local government, and individuals;

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- F. An estimate of the total annual implementation and compliance costs that are reasonably expected to be incurred by or passed along to businesses, local governments, or members of the public.
Note: Do not account for any actual or estimated cost savings that may be realized.

Costs to Affected Businesses – \$N/A

Costs to Local Governmental Units – \$N/A

Costs to Members of the Public – \$N/A

Total Annual Costs – \$N/A
(sum of above amounts)

Give a detailed statement of the data and methodology used in estimating the above cost estimate.

[Click here to enter agency response.](#)

- ☐ Yes If the total implementation and compliance costs exceed \$1.0 million over any two-year period through June 30, 2024, or exceed \$3.0 million over any two-year period on or after July 1, 2024, and prior to the submission or resubmission of the proposed rule(s) and regulation(s), did the agency hold a public hearing to find that the estimated costs have been accurately determined and are necessary for achieving legislative intent? If applicable, document when the public hearing was held, those in attendance, and any pertinent information from the hearing.
- ☒ No
- ☐ Not Applicable

If applicable, click here to enter public hearing information.

Provide an estimate to any changes in aggregate state revenues and expenditures for the implementation of the proposed rule(s) and regulation(s), for both the current fiscal year and next fiscal year.

None

Provide an estimate of any immediate or long-range economic impact of the proposed rule(s) and regulation(s) on any individual(s), small employers, and the general public. If no dollar estimate can be given for any individual(s), small employers, and the general public, give specific reasons why no estimate is possible.

None

- G. If the proposed rule(s) and regulation(s) increases or decreases revenues of cities, counties or school districts, or imposes functions or responsibilities on cities, counties or school districts that will increase expenditures or fiscal liability, describe how the state agency consulted with the League of Kansas Municipalities, Kansas Association of Counties, and/or the Kansas Association of School Boards.

None.

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- H. Describe how the agency consulted and solicited information from businesses, associations, local governments, state agencies, or institutions and members of the public that may be affected by the proposed rule(s) and regulation(s).

[Click here to enter agency response.](#)

Section IV

Does the Economic Impact Statement involve any environmental rule(s) and regulation(s)?

☐ Yes If yes, complete the remainder of Section IV.

☒ No If no, skip the remainder of Section IV.

- A. Describe the capital and annual costs of compliance with the proposed rule(s) and regulation(s), and the persons who would bear the costs.

[Click here to enter agency response.](#)

- B. Describe the initial and annual costs of implementing and enforcing the proposed rule(s) and regulation(s), including the estimated amount of paperwork, and the state agencies, other governmental agencies, or other persons who would bear the costs.

[Click here to enter agency response.](#)

- C. Describe the costs that would likely accrue if the proposed rule(s) and regulation(s) are not adopted, as well as the persons who would bear the costs and would be affected by the failure to adopt the rule(s) and regulation(s).

[Click here to enter agency response.](#)

- D. Provide a detailed statement of the data and methodology used in estimating the costs used.

[Click here to enter agency response.](#)

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