

**SENATE BILL No. 117**

By Committee on Ways and Means

2-7

1 AN ACT concerning the Kansas health policy authority's drug utilization  
2 program; amending K.S.A. 2010 Supp. 39-7,119, 39-7,121a and 77-  
3 421 and repealing the existing sections.  
4

5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2010 Supp. 39-7,119 is hereby amended to read as  
7 follows: 39-7,119. (a) There is hereby created the medicaid drug  
8 utilization review board which shall be responsible for the  
9 implementation of retrospective and prospective drug utilization  
10 programs under the Kansas medicaid program. *Every meeting of the*  
11 *medicaid drug utilization review board shall be subject to the provisions*  
12 *of the open meetings act.*

13 (b) Except as provided in subsection (i), the board shall consist of at  
14 least seven members appointed as follows:

15 (1) Two licensed physicians actively engaged in the practice of  
16 medicine, nominated by the Kansas medical society and appointed by the  
17 Kansas health policy authority from a list of four nominees;

18 (2) one licensed physician actively engaged in the practice of  
19 osteopathic medicine, nominated by the Kansas association of osteopathic  
20 medicine and appointed by the Kansas health policy authority from a list  
21 of four nominees;

22 (3) two licensed pharmacists actively engaged in the practice of  
23 pharmacy, nominated by the Kansas pharmacy association and appointed  
24 by the Kansas health policy authority from a list of four nominees;

25 (4) one person licensed as a pharmacist and actively engaged in  
26 academic pharmacy, appointed by the Kansas health policy authority  
27 from a list of four nominees provided by the university of Kansas;

28 (5) one licensed professional nurse actively engaged in long-term  
29 care nursing, nominated by the Kansas state nurses association and  
30 appointed by the Kansas health policy authority from a list of four  
31 nominees.

32 (c) The Kansas health policy authority may add two additional  
33 members so long as no class of professional representatives exceeds 51%  
34 of the membership.

35 (d) The physician and pharmacist members shall have expertise in  
36 the clinically appropriate prescribing and dispensing of outpatient drugs.

1 (e) The appointments to the board shall be for terms of three years.  
2 In making the appointments, the Kansas health policy authority shall  
3 provide for geographic balance in the representation on the board to the  
4 extent possible. Subject to the provisions of subsection (i), members may  
5 be reappointed.

6 (f) The board shall elect a chairperson from among board members  
7 who shall serve a one-year term. The chairperson may serve consecutive  
8 terms.

9 (g) The board, in accordance with K.S.A. 75-4319 and amendments  
10 thereto, may recess for a closed or executive meeting when it is  
11 considering matters relating to identifiable patients or providers.

12 (h) All actions of the medicaid drug utilization review board shall be  
13 upon the affirmative vote of five members of the board and the vote of  
14 each member present when action was taken shall be recorded by roll call  
15 vote.

16 (i) Upon the expiration of the term of office of any member of the  
17 medicaid drug utilization review board on or after the effective date of  
18 this act and in any case of a vacancy existing in the membership position  
19 of any member of the medicaid drug utilization review board on or after  
20 the effective date of this act, a successor shall be appointed by the Kansas  
21 health policy authority so that as the terms of members expire, or  
22 vacancies occur, members are appointed and the composition of the board  
23 is changed in accordance with the following and such appointment shall  
24 be made by the Kansas health policy authority in the following order of  
25 priority:

26 (1) One member shall be a licensed pharmacist who is actively  
27 performing or who has experience performing medicaid pharmacy  
28 services for a hospital and who is nominated by the Kansas hospital  
29 association and appointed by the Kansas health policy authority from a  
30 list of two or more nominees;

31 (2) one member shall be a licensed pharmacist who is actively  
32 performing or who has experience performing medicaid pharmacy  
33 services for a licensed adult care home and who is nominated by the state  
34 board of pharmacy and appointed by the Kansas health policy authority  
35 from a list of two or more nominees;

36 (3) one member shall be a licensed physician who is actively  
37 engaged in the general practice of allopathic medicine and who has  
38 practice experience with the state medicaid plan and who is nominated by  
39 the Kansas medical society and appointed by the Kansas health policy  
40 authority from a list of two or more nominees;

41 (4) one member shall be a licensed physician who is actively  
42 engaged in mental health practice providing care and treatment to persons  
43 with mental illness, who has practice experience with the state medicaid

1 plan and who is nominated by the Kansas psychiatric society and  
2 appointed by the Kansas health policy authority from a list of two or  
3 more nominees;

4 (5) one member shall be a licensed physician who is the medical  
5 director of a nursing facility, who has practice experience with the state  
6 medicaid plan and who is nominated by the Kansas medical society and  
7 appointed by the Kansas health policy authority from a list of two or  
8 more nominees;

9 (6) one member shall be a licensed physician who is actively  
10 engaged in the general practice of osteopathic medicine, who has practice  
11 experience with the state medicaid plan and who is nominated by the  
12 Kansas association of osteopathic medicine and who is appointed by the  
13 Kansas health policy authority from a list of two or more nominees;

14 (7) one member shall be a licensed pharmacist who is actively  
15 engaged in retail pharmacy, who has practice experience with the state  
16 medicaid plan and who is nominated by the state board of pharmacy and  
17 appointed by the Kansas health policy authority from a list of two or  
18 more nominees;

19 (8) one member shall be a licensed pharmacist who is actively  
20 engaged in or who has experience in research pharmacy and who is  
21 nominated jointly by the Kansas task force for the pharmaceutical  
22 research and manufacturers association and the university of Kansas and  
23 appointed by the Kansas health policy authority from a list of two or  
24 more jointly nominated persons; and

25 (9) one member shall be a licensed advanced registered nurse  
26 practitioner or physician assistant actively engaged in the practice of  
27 providing the health care and treatment services such person is licensed to  
28 perform, who has practice experience with the state medicaid plan and  
29 who is nominated jointly by the Kansas state nurses' association and the  
30 Kansas academy of physician assistants and appointed by the Kansas  
31 health policy authority from a list of two or more jointly nominated  
32 persons.

33 Sec. 2. K.S.A. 2010 Supp. 39-7,121a is hereby amended to read as  
34 follows: 39-7,121a. (a) The Kansas health policy authority may establish  
35 an advisory committee pursuant to K.S.A. 75-5313, and amendments  
36 thereto, to advise the Kansas health policy authority in the development  
37 of a preferred formulary listing of covered drugs by the state medicaid  
38 program.

39 (b) The Kansas health policy authority shall evaluate drugs and drug  
40 classes for inclusion in the state medicaid preferred drug formulary based  
41 on safety, effectiveness and clinical outcomes of such treatments. In  
42 addition, the Kansas health policy authority shall evaluate drugs and drug  
43 classes to determine whether inclusion of such drugs or drug classes in a

1 starter dose program would be clinically efficacious and cost effective. If  
2 the factors of safety, effectiveness and clinical outcomes among drugs  
3 being considered in the same class indicate no therapeutic advantage,  
4 then the Kansas health policy authority shall consider the cost  
5 effectiveness and the net economic impact of such drugs in making  
6 recommendations for inclusion in the state medicaid preferred drug  
7 formulary. Drugs which do not have a significant, clinically meaningful  
8 therapeutic advantage in terms of safety, effectiveness or clinical  
9 outcomes over other drugs in the same class which have been selected for  
10 the preferred drug formulary may be excluded from the preferred drug  
11 formulary and may be subject to prior authorization in accordance with  
12 state and federal law, except, prior to July 1, 2003, where a prescriber has  
13 personally written "dispense as written" or "D.A.W.", or has signed the  
14 prescriber's name on the "dispense as written" signature line in  
15 accordance with K.S.A. 65-1637, and amendments thereto.

16 (c) The Kansas health policy authority shall consider the net  
17 economic impact of drugs selected or excluded from the preferred  
18 formulary and may gather information on the costs of specific drugs,  
19 rebates or discounts pursuant to 42 U.S.C. § 1396r-8, dispensing costs,  
20 dosing requirements and utilization of other drugs or other medicaid  
21 health care services.

22 (d) The Kansas health policy authority may accept all services,  
23 including, but not limited to, disease state management, associated with  
24 the delivery of pharmacy benefits under the state medicaid program  
25 having a determinable cost effect in addition to the medicaid prescription  
26 drug rebates required pursuant to 42 U.S.C. ~~section~~ § 1396r-8.

27 (e) The state medicaid preferred drug formulary shall be submitted  
28 to the medicaid drug utilization review board for review and policy  
29 recommendations.

30 (f) *All meetings of any advisory committee established pursuant to*  
31 *subsection (a), including the preferred drug list committee, and all*  
32 *meetings of the Kansas health policy authority pursuant to subsection (b)*  
33 *which involve the evaluation of drugs and drug classes shall be subject to*  
34 *the provisions of the open meetings act.*

35 (g) *In addition to the provisions of subsection (f), all meetings of any*  
36 *advisory committee established pursuant to subsection (a), including the*  
37 *preferred drug list committee, shall include in its procedure for its*  
38 *meetings the following:*

39 (1) *Nonmembers of the committee and other interested parties shall*  
40 *be recognized by the committee chairperson only during designated public*  
41 *comments periods.*

42 (2) *Pharmaceutical manufactureres or other interested parties shall*  
43 *submit their formulary submission in a standardized format to the Kansas*

1 *health policy designee at least three to four weeks prior to the date of the*  
2 *meeting of the advisory committee established pursuant to subsection (a),*  
3 *including the preferred drug list committee. The Kansas health policy*  
4 *authority and any advisory committee established pursuant to subsection*  
5 *(a), including preferred drug list committee, shall notify all*  
6 *pharmaceutical manufacturers or other interested parties known to the*  
7 *agency and the advisory committee of such meeting date at least six*  
8 *weeks in advance of such meeting date.*

9 (3) *Prior to any final action by either the Kansas health policy*  
10 *committee or any advisory committee established pursuant to subsection*  
11 *(a), including the preferred drug list committee, on a decision pertaining*  
12 *to a drug or drug class, there shall be a designated public comment*  
13 *period of at least 15 minutes for each drug in the therapeutic drug class*  
14 *under discussion for the purpose of providing key points outlining the*  
15 *evidence-based value of any drug under consideration.*

16 Sec. 3. K.S.A. 2010 Supp. 77-421 is hereby amended to read as  
17 follows: 77-421. (a) (1) Except as provided by subsection (a)(2),  
18 subsection (a)(3) or subsection (a)(4), prior to the adoption of any  
19 permanent rule and regulation or any temporary rule and regulation which  
20 is required to be adopted as a temporary rule and regulation in order to  
21 comply with the requirements of the statute authorizing the same and  
22 after any such rule and regulation has been approved by the secretary of  
23 administration and the attorney general, the adopting state agency shall  
24 give at least 60 days' notice of its intended action in the Kansas register  
25 and to the secretary of state and to the joint committee on administrative  
26 rules and regulations established by K.S.A. 77-436, and amendments  
27 thereto. The notice shall be provided to the secretary of state and to the  
28 chairperson, vice chairperson, ranking minority member of the joint  
29 committee and legislative research department and shall be published in  
30 the Kansas register. A complete copy of all proposed rules and regulations  
31 and the complete economic impact statement required by K.S.A. 77-416,  
32 and amendments thereto, shall accompany the notice sent to the secretary  
33 of state. The notice shall contain:

34 (A) A summary of the substance of the proposed rules and  
35 regulations;

36 (B) a summary of the economic impact statement indicating the  
37 estimated economic impact on governmental agencies or units, persons  
38 subject to the proposed rules and regulations and the general public;

39 (C) a summary of the environmental benefit statement, if applicable,  
40 indicating the need for the proposed rules and regulations;

41 (D) the address where a complete copy of the proposed rules and  
42 regulations, the complete economic impact statement, the environmental  
43 benefit statement, if applicable, required by K.S.A. 77-416, and

1 amendments thereto, may be obtained;

2 (E) the time and place of the public hearing to be held; the manner in  
3 which interested parties may present their views; and

4 (F) a specific statement that the period of 60 days' notice constitutes  
5 a public comment period for the purpose of receiving written public  
6 comments on the proposed rules and regulations and the address where  
7 such comments may be submitted to the state agency. Publication of such  
8 notice in the Kansas register shall constitute notice to all parties affected  
9 by the rules and regulations.

10 (2) Prior to adopting any rule and regulation which establishes  
11 seasons and fixes bag, creel, possession, size or length limits for the  
12 taking or possession of wildlife and after such rule and regulation has  
13 been approved by the secretary of administration and the attorney  
14 general, the secretary of the department of wildlife and parks shall give at  
15 least 30 days' notice of its intended action in the Kansas register and to  
16 the secretary of state and to the joint committee on administrative rules  
17 and regulations created pursuant to K.S.A. 77-436, and amendments  
18 thereto. All other provisions of subsection (a)(1) shall apply to such rules  
19 and regulations, except that the statement required by subsection (a)(1)(E)  
20 shall state that the period of 30 days' notice constitutes a public comment  
21 period on such rules and regulations.

22 ~~(3) Prior to adopting any rule and regulation which establishes any~~  
23 ~~permanent prior authorization on a prescription-only drug pursuant to~~  
24 ~~K.S.A. 39-7,120, and amendments thereto, or which concerns coverage or~~  
25 ~~reimbursement for pharmaceuticals under the pharmacy program of the~~  
26 ~~state medicaid plan, and after such rule and regulation has been approved~~  
27 ~~by the secretary of administration and the attorney general, the Kansas~~  
28 ~~health policy authority shall give at least 30 days' notice of its intended~~  
29 ~~action in the Kansas register and to the secretary of state and to the joint~~  
30 ~~committee on administrative rules and regulations created pursuant to~~  
31 ~~K.S.A. 77-436, and amendments thereto. All other provisions of~~  
32 ~~subsection (a)(1) shall apply to such rules and regulations, except that the~~  
33 ~~statement required by subsection (a)(1)(E) shall state that the period of 30~~  
34 ~~days' notice constitutes a public comment period on such rules and~~  
35 ~~regulations.~~

36 (4) (3) Prior to adopting any rule and regulation pursuant to  
37 subsection (c), the state *agency* shall give at least 30 days' notice of its  
38 intended action in the Kansas register and to the secretary of state and to  
39 the joint committee on administrative rules and regulations created  
40 pursuant to K.S.A. 77-436, and amendments thereto. All other provisions  
41 of subsection (a)(1) shall apply to such rules and regulations, except that  
42 the statement required by subsection (a)(1)(E) shall state that the period  
43 of notice constitutes a public comment period on such rules and

1 regulations.

2 (b) (1) On the date of the hearing, all interested parties shall be given  
3 reasonable opportunity to present their views or arguments on adoption of  
4 the rule and regulation, either orally or in writing. At the time it adopts or  
5 amends a rule and regulation, the state agency shall prepare a concise  
6 statement of the principal reasons for adopting the rule and regulation or  
7 amendment thereto, including:

8 (A) The agency's reasons for not accepting substantial arguments  
9 made in testimony and comments; and

10 (B) the reasons for any substantial change between the text of the  
11 proposed adopted or amended rule and regulation contained in the  
12 published notice of the proposed adoption or amendment of the rule and  
13 regulation and the text of the rule and regulation as finally adopted.

14 (2) Whenever a state agency is required by any other statute to give  
15 notice and hold a hearing before adopting, amending, reviving or  
16 revoking a rule and regulation, the state agency, in lieu of following the  
17 requirements or statutory procedure set out in such other law, may give  
18 notice and hold hearings on proposed rules and regulations in the manner  
19 prescribed by this section.

20 (3) Notwithstanding the other provisions of this section, the Kansas  
21 parole board and the secretary of corrections, may give notice or an  
22 opportunity to be heard to any inmate in the custody of the secretary of  
23 corrections with regard to the adoption of any rule and regulation, but the  
24 secretary shall not be required to give such notice or opportunity.

25 (c) (1) The agency shall initiate new rulemaking proceedings under  
26 this act, if a state agency proposes to adopt a final rule and regulation  
27 that:

28 (A) Differs in subject matter or effect in any material respect from  
29 the rule and regulation as originally proposed; and

30 (B) is not a logical outgrowth of the rule and regulation as originally  
31 proposed.

32 (2) In accordance with subsection (a), the period for public comment  
33 required by K.S.A. 77-421, and amendments thereto, may be shortened to  
34 not less than 30 days.

35 (3) For the purposes of this provision, a rule and regulation is not the  
36 logical outgrowth of the rule and regulation as originally proposed if a  
37 person affected by the final rule and regulation was not put on notice that  
38 such person's interests were affected in the rulemaking.

39 (d) When, pursuant to this or any other statute, a state agency holds  
40 a hearing on the adoption of a proposed rule and regulation, the agency  
41 shall cause written minutes or other records, including a record  
42 maintained on sound recording tape or on any electronically accessed  
43 media or any combination of written or electronically accessed media

1 records of the hearing to be made. If the proposed rule and regulation is  
2 adopted and becomes effective, the state agency shall maintain, for not  
3 less than three years after its effective date, such minutes or other records,  
4 together with any recording, transcript or other record made of the  
5 hearing and a list of all persons who appeared at the hearing and who  
6 they represented, any written testimony presented at the hearing and any  
7 written comments submitted during the public comment period.

8 (e) No rule and regulation shall be adopted by a board, commission,  
9 authority or other similar body except at a meeting which is open to the  
10 public and notwithstanding any other provision of law to the contrary, no  
11 rule and regulation shall be adopted by a board, commission, authority or  
12 other similar body unless it receives approval by roll call vote of a  
13 majority of the total membership thereof.

14 Sec. 4. K.S.A. 2010 Supp. 39-7,119, 39-7,121a and 77-421 are  
15 hereby repealed.

16 Sec. 5. This act shall take effect and be in force from and after its  
17 publication in the statute book.