

FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 286

92ND GENERAL ASSEMBLY

1125S.03T

2003

AN ACT

To repeal sections 208.480, 208.565, 338.501, 338.515, 338.520, 338.525, 338.545, and 338.550, RSMo, and to enact in lieu thereof seven new sections relating to the health care programs, with an emergency clause for a certain section.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 208.480, 208.565, 338.501, 338.515, 338.520, 338.525, 338.545, and 338.550, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 208.477, 208.478, 208.480, 208.565, 338.515, 338.520, and 338.550, to read as follows:

208.477. 1. For each state fiscal year, if the criteria used to determine eligibility for Medicaid coverage under a section 1115 waiver are more restrictive than those in place in state fiscal year 2003, the division of medical services shall:

(1) Reduce the federal reimbursement allowance assessment for that fiscal year. The reduction shall equal the amount of federal reimbursement allowance appropriated to fund the section 1115 waiver in state fiscal year 2002 multiplied by the percentage decrease in Medicaid waiver enrollment as a result of using the more restrictive waiver eligibility standards; and

(2) Increase cost of the uninsured payments for that fiscal year. The increased

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law. Matter in boldface type in the above law is proposed language.

10 **payments shall offset the higher uninsured costs resulting from the use of more restrictive**
11 **Medicaid waiver eligibility criteria, as determined by the department of social services.**

208.478. 1. For each state fiscal year beginning on or after July 1, 2003, the amount
2 **of appropriations made to fund Medicaid graduate medical education and enhanced**
3 **graduate medical education payments pursuant to subsections (19) and (21) of 13 CSR 70-**
4 **15.010 shall not be less than the amount paid for such purposes for state fiscal year 2002.**

5 **2. Sections 208.453 to 208.480 shall expire one hundred eighty days after the end**
6 **of any state fiscal year in which the requirements of subsection 1 of this section were not**
7 **met, unless during such one hundred eighty day period, payments are adjusted**
8 **prospectively by the director of the department of social services to comply with the**
9 **requirements of subsection 1 of this section.**

208.480. Notwithstanding the provisions of section 208.471 to the contrary, sections
2 208.453 to 208.480 shall expire on September 30, [2004] **2005.**

208.565. 1. The division shall negotiate with manufacturers for participation in the
2 program. The division shall issue a certificate of participation to pharmaceutical manufacturers
3 participating in the Missouri Senior Rx program. A pharmaceutical manufacturer may apply for
4 participation in the program with an application form prescribed by the commission. A
5 certificate of participation shall remain in effect for an initial period of not less than one year and
6 shall be automatically renewed unless terminated by either the manufacturer or the state with
7 sixty days' notification.

8 **2. For all transactions occurring prior to July 1, 2003, the rebate amount for each**
9 **drug shall be fifteen percent of the average manufacturers' price as defined pursuant to**
10 **42 U.S.C. 1396r-8(k)(1). For all transactions occurring on or after July 1, 2003, the rebate**
11 **amount for [each drug] name brand prescription drugs shall be fifteen percent and the rebate**
12 **amount for generic prescription drugs shall be eleven percent of the average manufacturers'**
13 **price as defined pursuant to 42 U.S.C. 1396r-8(k)(1). No other discounts shall apply. In order**
14 **to receive a certificate of participation a manufacturer or distributor participating in the Missouri**
15 **Senior Rx program shall provide the division of aging the average manufacturers' price for their**
16 **contracted products. The following shall apply to the providing of average manufacturers' price**
17 **information to the division of aging:**

18 (1) Any manufacturer or distributor with an agreement under this section that knowingly
19 provides false information is subject to a civil penalty in an amount not to exceed one hundred
20 thousand dollars for each provision of false information. Such penalties shall be in addition to
21 other penalties as prescribed by law;

22 (2) Notwithstanding any other provision of law, information disclosed by manufacturers
23 or wholesalers pursuant to this subsection or under an agreement with the division pursuant to

24 this section is confidential and shall not be disclosed by the division or any other state agency
25 or contractor therein in any form which discloses the identity of a specific manufacturer or
26 wholesaler or prices charged for drugs by such manufacturer or wholesaler, except to permit the
27 state auditor to review the information provided and the division of medical services for rebate
28 administration.

29 3. All rebates received through the program shall be used toward refunding the program.
30 If a pharmaceutical manufacturer refuses to participate in the rebate program, such refusal shall
31 not affect the manufacturer's status under the current Medicaid program. There shall be no drug
32 formulary, prior approval system, or any similar restriction imposed on the coverage of
33 outpatient drugs made by pharmaceutical manufacturers who have agreements to pay rebates for
34 drugs utilized in the Missouri Senior Rx program, provided that such outpatient drugs were
35 approved by the Food and Drug Administration.

36 4. Any prescription drug of a manufacturer that does not participate in the program shall
37 not be reimbursable.

338.515. The tax imposed by sections 338.500 to 338.550 shall become effective July
2 1, [2002] **2003**, or the effective date of sections 338.500 to 338.550, whichever is later.

338.520. 1. The determination of the amount of tax due shall be the monthly gross retail
2 prescription receipts reported to the department of revenue multiplied by the tax rate established
3 by rule by the department of social services. Such tax rate may be a graduated rate based on
4 gross retail prescription receipts and shall not exceed a rate of six percent per annum of gross
5 retail prescription receipts; provided, that such rate shall not exceed one-tenth of one percent per
6 annum in the case of licensed pharmacies of which eighty percent or more of such gross receipts
7 are attributable to prescription drugs that are delivered directly to the patient via common carrier,
8 by mail, or a courier service.

9 2. The department of social services shall notify each licensed retail pharmacy of the
10 amount of tax due. Such amount may be paid in increments over the balance of the assessment
11 period.

12 **3. The department of social services may adjust the tax rate quarterly on a**
13 **prospective basis. The department of social services may adjust more frequently for**
14 **individual providers if there is a substantial and statistically significant change in their**
15 **pharmacy sales characteristics. The department of social services may define such**
16 **adjustment criteria by rule.**

338.550. 1. The pharmacy tax required by sections 338.500 to 338.550 shall [be the
2 subject of an annual health care cost impact study commissioned by the department of insurance
3 to be completed prior to or on January 1, 2003, and each year the tax is in effect. The report shall
4 be submitted to the speaker of the house, president pro tem of the senate, and the governor. This

5 study shall employ an independent economist and an independent actuary paid for by the state's
6 department of social services. The department shall seek the advice and input from the
7 department of social services, business health care purchasers, as well as health care insurers in
8 the selection of the economist and actuary. This study shall assess the degree of health care costs
9 shifted to individual Missourians and individual and group health plans resulting from this tax.

10 **2.] expire ninety days after any one or more of the following conditions are met:**

11 **(1) The aggregate dispensing fee paid to pharmacists per prescription is less than**
12 **the fiscal year 2003 dispensing fees reimbursement amount; or**

13 **(2) The formula used to calculate the reimbursement for products dispensed by**
14 **pharmacies is changed resulting in lower reimbursement in the aggregate than provided**
15 **in fiscal year 2003; or**

16 **(3) June 30, 2005.**

17

18 The provisions of sections 338.500 to 338.550 shall not apply to pharmacies domiciled or
19 headquartered outside this state which are engaged in prescription drug sales that are delivered
20 directly to patients within this state via common carrier, mail or a carrier service.

21 **[3.] 2. Sections 338.500 to 338.550 shall expire on June 30, [2003] 2005.**

2 [338.501. In fiscal year 2003, the amount generated by the tax imposed
3 pursuant to section 338.500, less any amount paid pursuant to section 338.545, shall
4 be used in the formula necessary to qualify for the calculations included in house bill
5 1102, section 2.325 through section 2.333 as passed by the ninety-first general
6 assembly, second regular session.]

2 [338.525. If a pharmacy's gross retail prescription receipts are included in the
3 revenue assessed by the federal reimbursement allowance or the nursing facility
4 reimbursement allowance, the proportion of those taxes paid or the entire tax due
5 shall be allowed as a credit for the pharmacy tax due pursuant to section 338.500.]

2 [338.545. 1. The Medicaid pharmacy dispensing fee shall be adjusted to
3 include a supplemental payment amount equal to the tax assessment due plus ten
4 percent.

2 2. The amount of the supplemental payment shall be adjusted once annually
3 beginning July first or once annually after the initial start date of the pharmacy tax,
4 whichever is later.

2 3. If the pharmacy tax required by sections 338.500 to 338.550 is declared
3 invalid, the pharmacy dispensing fee for the Medicaid program shall be the same as
4 the amount required on July 1, 2001.]

2 Section B. Because immediate action is necessary to ensure the fiscal stability of the
3 Senior Rx program, the repeal and reenactment of sections 208.565 and 338.500 to 338.550 of
4 this act is deemed necessary for the immediate preservation of the public health, welfare, peace,
5 and safety, and is hereby declared to be an emergency act within the meaning of the constitution,

5 and the repeal and reenactment of sections 208.565 and 338.500 to 338.550 of this act shall be
6 in full force and effect upon its passage and approval.