

FIRST REGULAR SESSION

# HOUSE BILL NO. 544

## 94TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES THRELKELD (Sponsor), TILLEY AND SATER (Co-sponsors).

Read 1st time January 23, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

1365L.01I

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### AN ACT

To amend chapter 338, RSMo, by adding thereto fourteen new sections relating to the licensing of pharmacy benefit managers.

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

Section A. Chapter 338, RSMo, is amended by adding thereto fourteen new sections, to  
2 be known as sections 338.316, 338.317, 338.318, 338.319, 338.320, 338.321, 338.322, 338.323,  
3 338.324, 338.325, 338.326, 338.327, 338.328, and 338.329, to read as follows:

**338.316. 1. Sections 338.316 to 338.329 shall be known and may be cited as the**  
2 **"Missouri Pharmacy Benefits Managers' Fair Trade Practice Act".**

3 **2. A pharmacy benefits manager is subject to sections 338.316 to 338.329 if the**  
4 **pharmacy benefits manager provides claims processing services or other prescription drug**  
5 **or device services, or both, to patients who are residents of Missouri. No pharmacy**  
6 **benefits manager shall do business or provide services in Missouri unless the pharmacy**  
7 **benefits manager is in full compliance with sections 338.316 to 338.329. If a pharmacy**  
8 **benefits manager becomes insolvent or ceases to do business in Missouri in any assessable**  
9 **or license year, the pharmacy benefits manager shall remain liable for the payment of the**  
10 **assessment for the period in which it operated as a pharmacy benefits manager in**  
11 **Missouri.**

**338.317. 1. Before an initial or renewed execution of a pharmacy benefits manager**  
2 **contract, the pharmacy benefits manager shall inform the pharmacy or pharmacist in**

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

3 writing of the number of and other relevant information concerning patients eligible to be  
4 served under the pharmacy benefits manager contract.

5       2. Before an initial or renewed execution of a pharmacy benefits manager contract,  
6 and thereafter upon reasonable request from a pharmacy or pharmacist with whom a  
7 pharmacy benefits manager contracts, a pharmacy benefits manager shall make available  
8 to the pharmacy or pharmacist any:

9       (1) Benchmark and rate used to compute reimbursement of the pharmacy or  
10 pharmacist for medications and products dispensed under the pharmacy benefits manager  
11 contract; and

12       (2) Schedule or other listing of maximum allowable costs.

13       3. There shall be a separate pharmacy benefits manager contract with each  
14 pharmacy or pharmacist for each of the pharmacy benefits manager's provider networks.

15       4. Pharmacy benefits manager contracts providing for indemnity of the pharmacy  
16 or pharmacist shall be separate from contracts providing for cash discounts.

17       5. A pharmacy benefits manager shall not require that a pharmacy or pharmacist  
18 participate in one pharmacy benefits manager contract in order to participate in another  
19 contract.

20       6. A pharmacy benefits manager shall not require that any other pharmacy or  
21 pharmacist also participate in a contract in order to allow one pharmacy to sign a contract.  
22 Any pharmacy may opt out of a contract.

23       7. A pharmacy benefits manager shall not auto enroll or passively enroll the  
24 pharmacy on a contract. The pharmacy shall sign a contract before assuming  
25 responsibility to fill prescriptions.

26       8. A pharmacy benefits manager shall establish rural payment rates for pharmacies  
27 that do not have competition within fifteen miles.

28       9. A pharmacy benefits manager shall not discriminate between pharmacies or  
29 pharmacists on the basis of co-payments or days of supply.

30       10. All pharmacy benefits manager contracts shall provide specific time limits for  
31 the pharmacy benefits manager to pay the pharmacy or pharmacist, or both, for  
32 pharmacist's services rendered.

33       11. No pharmacy benefits manager contract shall mandate that any pharmacy or  
34 pharmacist change a patient's drug unless the prescribing practitioner so orders.

35       12. No pharmacy benefits manager contract shall mandate basic record keeping by  
36 any pharmacy or pharmacist that is more stringent than required by state or federal laws  
37 or regulations.

38       **13. All pharmacy benefits manager contracts shall require use of uniform**  
39 **prescription drug cards that have all information necessary for the pharmacist to be able**  
40 **to adjudicate the claim. If the pharmacy benefits manager has not provided the patient**  
41 **with an insurance card on the first day of eligibility, the pharmacist may bill for the time**  
42 **that it takes to get the appropriate information from the pharmacy benefits manager.**

43       **14. A pharmacy benefits manager shall file its contract forms for pharmacy benefits**  
44 **manager contracts with the commissioner thirty days before the first use of the pharmacy**  
45 **benefits manager contract forms in Missouri.**

46       **15. A pharmacy benefits manager shall serve as or act as a fiduciary for the covered**  
47 **entity.**

**338.318. 1. Before terminating a pharmacy or pharmacist from a pharmacy**  
2 **benefits manager's provider network, the pharmacy benefits manager shall give the**  
3 **pharmacy or pharmacist a written explanation of the reason for the termination thirty**  
4 **days before the actual termination unless the termination is taken in reaction to:**

- 5       **(1) Loss of license;**  
6       **(2) Loss of professional liability insurance; or**  
7       **(3) Conviction of fraud or misrepresentation.**

8       **2. No pharmacy benefits manager shall terminate a contract with a pharmacy or**  
9 **pharmacist or terminate, suspend, or otherwise limit the participation of a pharmacy or**  
10 **pharmacist in a pharmacy benefits manager's provider network or audit a pharmacy or**  
11 **pharmacist because:**

12       **(1) The pharmacy or pharmacist expresses disagreement with the pharmacy**  
13 **benefits manager's decision to deny or limit benefits to a patient;**

14       **(2) The pharmacist discusses with a patient any aspect of the patient's medical**  
15 **condition or treatment alternatives;**

16       **(3) The pharmacist makes personal recommendations regarding selecting a**  
17 **pharmacy benefits manager based on the pharmacist's personal knowledge of the health**  
18 **needs of the patient;**

19       **(4) The pharmacy or pharmacist protests or expresses disagreement with a**  
20 **decision, policy, or practice of the pharmacy benefits manager;**

21       **(5) The pharmacy or pharmacist has, in good faith, communicated with or**  
22 **advocated on behalf of any patient related to the needs of the patient regarding the method**  
23 **by which the pharmacy or pharmacist is compensated for services provided under the**  
24 **contract with the pharmacy benefits manager;**

25       **(6) The pharmacy or pharmacist complains to the board or commissioner that the**  
26 **pharmacy benefits manager has failed to comply with sections 338.316 to 338.329; or**

27           (7) The pharmacy or pharmacist asserts rights under the contract with the  
28 pharmacy benefits manager.

29           3. Termination of a pharmacy benefits manager contract or termination of a  
30 pharmacy or pharmacist from a pharmacy benefits manager's provider network shall not  
31 release the pharmacy benefits manager from the obligation to make any payment due to  
32 the pharmacy or pharmacist for pharmacist's services rendered.

33           4. No pharmacy or pharmacist shall be held responsible for acts or omissions of a  
34 pharmacy benefits manager.

          338.319. In handling moneys received by the pharmacy benefits manager for  
2 pharmacist's services, the pharmacy benefits manager acts as a fiduciary of the pharmacy,  
3 or pharmacist who provided the services. If a pharmacy benefits manager processes claims  
4 via electronic review then it shall electronically transmit payment within seven calendar  
5 days of such claims transmission to the pharmacist or pharmacy. Specific time limits for  
6 the pharmacy benefits manager to pay the pharmacist for all other services rendered shall  
7 be set forth in the agreement. Within twenty-four hours of a price increase notification by  
8 a manufacturer or supplier, the pharmacy benefits manager shall adjust its payments to  
9 the pharmacist or pharmacy consistent with the price increase. Claims paid by the  
10 pharmacy benefits manager shall not be retroactively denied or adjusted after seven days  
11 from adjudication of such claims except as provided in this section. In no case shall  
12 acknowledgment of eligibility be retroactively reversed. The pharmacy benefits manager  
13 may retroactively deny or adjust in the event the original claim was submitted  
14 fraudulently, the original claim payment was incorrect because the provider was already  
15 paid for services rendered, or the services were not rendered by the pharmacist or  
16 pharmacy. A pharmacy benefits manager shall distribute all moneys they receive for  
17 pharmacist's services to pharmacies and pharmacists who provided the pharmacist's  
18 services and shall do so within fourteen days. A pharmacy benefits manager shall itemize  
19 by individual claim the amounts the pharmacy benefits manager actually paid each  
20 pharmacy or pharmacist for pharmacist's services on any invoice, statement, or remittance.  
21 If a pharmacy benefits manager processes claims by electronic review, then it shall  
22 electronically provide payment remittances by the complaint transmittal standards of the  
23 federal Health Insurance Portability and Accountability Act of 1996, as amended, without  
24 charge to the pharmacy or pharmacist.

          338.320. 1. A pharmacy benefits manager, at the time of the contract, shall list  
2 their audit procedures and the basis of the audits. If the pharmacy benefits manager  
3 changes such procedures, the pharmacy benefits manager shall notify the providers in  
4 writing.

5           **2. If a pharmacy benefits manager intends to audit the pharmacy claim, the**  
6 **pharmacy benefits manager shall pay the charges submitted at one hundred percent of the**  
7 **contracted rate on the claim no later than the fourteenth day after the date the insurer**  
8 **receives the clean claim from the pharmacy. The pharmacy benefits manager shall clearly**  
9 **indicate on the explanation of payment statement that the clean claim is being paid at one**  
10 **hundred percent of the contracted rate, subject to completion of the audit.**

11           **3. Extrapolation calculations in an audit are prohibited.**

12           **4. A pharmacy benefits manager shall not recoup any moneys due from an audit**  
13 **by setoff from future remittances until the results of the audit is finalized, including**  
14 **resolution of any challenges to the audit.**

15           **5. A pharmacy benefits manager shall not retain any moneys obtained from the**  
16 **audit of a pharmacy or pharmacist in excess of the actual direct costs of conducting the**  
17 **audit. All remaining proceeds shall be returned to the insured or employer.**

18           **6. A pharmacy benefits manager shall not recoup any moneys as a result of the**  
19 **audit of a pharmacy or pharmacist unless the audit is concluded within one hundred eighty**  
20 **days after the pharmacist provides the services that are the subject of the audit.**

21           **7. A pharmacy benefits manager may only perform an on-site audit at a pharmacy**  
22 **once yearly unless fraud or illegal activity is suspected.**

23           **8. Provisions of this section shall not be waived, voided, or nullified by contract.**

**338.321. 1. To the extent that a pharmacy benefits manager uses benchmarks in**  
2 **computing reimbursement for medications and products dispensed by pharmacies or**  
3 **pharmacists with whom the pharmacy benefits manager contracts, the benchmarks shall**  
4 **be current, nationally recognized benchmarks as follows:**

5           **(1) For brand drugs, either the benchmark price as listed in First Data Bank,**  
6 **Hearst Publications, or Facts & Comparisons, formerly Medispan, as they existed on**  
7 **January 1, 2006; and**

8           **(2) For generic drugs, the maximum allowable costs shall not be less than the**  
9 **reasonably available market price in Missouri, as determined by Missouri Medicaid.**

10

11 **The benchmarks shall be calculated with the same National Drug Code (NDC) benchmark**  
12 **price as used when calculating the charge for such prescription to the recipient of the**  
13 **medication and the covered entity.**

14           **2. If the publications specified in subsection 1 of this section cease to be nationally**  
15 **recognized benchmarks used to base reimbursement for medications and products**  
16 **dispensed by pharmacies and pharmacists, other current nationally recognized**  
17 **benchmarks, as are then current and in effect, may be utilized so long as the benchmark**

18 is established and published by a person, business, or other entity with which no pharmacy  
19 benefits manager has a financial or business interest or connection.

20       **3. No pharmacy benefits manager may place two drugs in the same category for**  
21 **application of a maximum allowable cost unless both drugs are in compliance with**  
22 **pharmacy laws as equivalent and generically interchangeable with a United States Food**  
23 **and Drug Administration Orange Book rating of "A.", as it existed on January 1, 2006.**

**338.322. 1. No pharmacy benefits manager or representative of a pharmacy**  
2 **benefits manager may cause or knowingly permit the use of any advertisement, promotion,**  
3 **solicitation, proposal, or offer that is untrue, deceptive, or misleading.**

4       **2. No pharmacy benefits manager shall discriminate on the basis of race, creed,**  
5 **color, sex, or religion in the selection of pharmacies or pharmacists with which the**  
6 **pharmacy benefits manager contracts.**

7       **3. A pharmacy benefits manager shall be entitled to access a pharmacy's or**  
8 **pharmacist's usual and customary price only for comparison to specific claims for payment**  
9 **made by the pharmacy or pharmacist to the pharmacy benefits manager. Usual and**  
10 **customary pricing shall be confidential, and any other use or disclosure by the pharmacy**  
11 **benefits manager shall be prohibited.**

12       **4. A pharmacy benefits manager shall not intervene in the delivery or transmission**  
13 **of prescriptions from the prescriber to the pharmacist or pharmacy for any reason,**  
14 **including influencing the prescriber's choice of therapy, influencing the patient's choice**  
15 **of pharmacist or pharmacy, or altering the prescription information, including but not**  
16 **limited to, switching the prescribed drug without the express authorization of the**  
17 **prescriber.**

18       **5. No agreement shall mandate that a pharmacist or pharmacy change a covered**  
19 **person's prescription unless the prescribing physician and the covered person authorize**  
20 **the pharmacist to make the change. With regard to the dispensation of a substitute**  
21 **prescription drug for a prescribed drug to a covered individual, when the pharmacy**  
22 **benefits manager requests a substitution, the following provisions apply:**

23       **(1) The pharmacy benefits manager may request the substitution of a lower-priced**  
24 **generic and therapeutically equivalent drug for a higher-priced prescribed drug;**

25       **(2) With regard to substitutions in which the substitute drug's net cost is more for**  
26 **the covered individual or the covered entity than the prescribed drug, the substitution shall**  
27 **be made only for medical reasons that benefit the covered individual. If a substitution is**  
28 **being requested under this subsection, the pharmacy benefits manager shall obtain the**  
29 **approval of the prescribing health professional.**

30           **6. No pharmacy benefits manager shall engage in or interfere with the practice of**  
31 **medicine or intervene in the practice of medicine between prescribers and their patients.**

32           **7. No pharmacy benefits manager shall avoid responsibility for compliance with**  
33 **any provision in sections 338.316 to 338.329 through the use of an agent or contractor,**  
34 **through an administrator, or through delegation to another person or entity.**

35           **8. The insurer and the pharmacy benefits manager shall not discriminate with**  
36 **respect to participation in the network or reimbursement as to any pharmacist or**  
37 **pharmacy that is acting within the scope of his or her license or certification.**

38           **9. The pharmacy benefits manager shall not transfer a health benefit plan to**  
39 **another payment network unless it receives written authorization from the insurer.**

40           **10. No pharmacy benefits manager shall discriminate when contracting with**  
41 **pharmacies on the basis of co-payments or days of supply. A contract shall apply the same**  
42 **coinsurance, co-payment, and deductible to covered drug prescriptions filled by any**  
43 **pharmacy, including a mail order pharmacy or pharmacist who participates in the**  
44 **network.**

45           **11. No pharmacy benefits manager shall discriminate when advertising in any**  
46 **media which pharmacies are participating pharmacies. Any list of participating**  
47 **pharmacies shall be complete and all inclusive.**

**338.323. 1. No pharmacy benefits manager shall receive or accept, directly or**  
2 **indirectly, overtly or covertly, in cash or in kind, any rebate, kickback, or any special**  
3 **payment, favor, or advantage of any valuable consideration or inducement for influencing**  
4 **or switching, in whole or in part, a patient's drug product unless the rebate, kickback,**  
5 **payment, favor, valuable consideration, or inducement is fully disclosed by the pharmacy**  
6 **benefits manager to the person, business, or other entity that is purchasing pharmacist's**  
7 **services through the pharmacy benefits manager. Every pharmacy benefits manager shall**  
8 **disclose the following agreements to the person, business, or other entity that is purchasing**  
9 **pharmacist's services through the pharmacy benefits manager:**

10           **(1) Any agreement with a pharmaceutical manufacturer to favor the**  
11 **manufacturer's products over a competitor's products or to place the manufacturer's drug**  
12 **on the pharmacy benefits manager's preferred list or formulary, or to switch the drug**  
13 **prescribed by the patient's health care provider with a drug agreed to by the pharmacy**  
14 **benefits manager and the manufacturer;**

15           **(2) Any agreement with a pharmaceutical manufacturer to share manufacturer**  
16 **rebates and discounts with the pharmacy benefits manager or to pay money or other**  
17 **economic benefits to the pharmacy benefits manager;**

18           (3) Any agreement or practice to bill the health plan for prescription drugs at a cost  
19 higher than the pharmacy benefits manager pays the pharmacy;

20           (4) Any agreement to share revenue with a mail order or internet pharmacy  
21 company; and

22           (5) Any agreement to sell prescription drug data, including data concerning the  
23 prescribing practices of the health care providers in the state.

24           2. The use of a medication's National Drug Code (NDC) benchmark price in billing  
25 for prescriptions shall be:

26           (1) No greater per unit than the highest listed NDC benchmark price as available  
27 to retail or hospital pharmacy practice; and

28           (2) No greater per unit than the lowest listed National Drug Code (NDC)  
29 benchmark price used by the pharmacy benefit manager when calculating the  
30 reimbursement to any pharmacist in the network.

31

32 A pharmacy benefits manager shall only bill a covered entity for equivalent price of those  
33 commonly used bottles.

34           3. A pharmacy benefits manager shall itemize by individual claim, the prescription  
35 number, the eleven digit NDC number, the quantity and the amount the pharmacy benefits  
36 manager actually paid each pharmacy or pharmacist and the amount charged to the  
37 person, business, or other entity that is purchasing pharmacist's services through the  
38 pharmacy benefits manager.

338.324. 1. A pharmacy benefits manager shall provide to a covered entity all  
2 financial and utilization information requested by the covered entity relating to the  
3 provision of benefits to covered individuals through that covered entity and all financial  
4 and utilization information relating to services to that covered entity. A pharmacy benefits  
5 manager providing information under this section shall designate that material as  
6 confidential. Information designated as confidential by a pharmacy benefits manager and  
7 provided to a covered entity under this section shall not be disclosed by the covered entity  
8 to any person without the consent to the pharmacy benefits manager, except that disclosure  
9 may be made when authorized by a court.

10           2. A pharmacy benefits manager shall disclose to the covered entity all financial  
11 terms and arrangements for remuneration of any kind that apply between the pharmacy  
12 benefits manager and any prescription drug manufacturer or labeler, including, without  
13 limitation, rebates, formulary management and drug-switch or substitution programs,  
14 educational support, claims processing, or pharmacy network fees that are charged from  
15 retail pharmacies and data sales fees.



16           **3. A pharmacy benefits manager shall disclose to the covered entity whether there**  
17 **is a difference between the price paid to retail pharmacy and the amount billed to the**  
18 **covered entity for said purchase.**

19           **4. The covered entity shall audit the pharmacy benefits manager's books and**  
20 **records related to the rebates or other information provided in subsections 1 to 3 of this**  
21 **section. The covered entity may have the pharmacy benefits manager's books and records**  
22 **related to the rebates or other information to the extent the information relates directly or**  
23 **indirectly to such covered entity's contract and is audited in accordance with the terms of**  
24 **the pharmacy benefits management services contract between the parties. However, if the**  
25 **parties have not expressly provided for audit rights and the pharmacy benefits manager**  
26 **has advised the covered entity that other reasonable options are available and subject to**  
27 **negotiation, the covered entity may have such books and records audited if:**

28           **(1) Such audits are conducted no more frequently than once in each twelve-month**  
29 **period upon not less than thirty business days' written notice to the pharmacy benefits**  
30 **manager;**

31           **(2) The covered entity selects an independent firm to conduct such audit, and such**  
32 **independent firm signs a confidentiality agreement with the covered entity and the**  
33 **pharmacy benefits manager ensuring that all information obtained during such audit will**  
34 **be treated as confidential.**

35           **5. No pharmacy benefits manager shall intervene in the delivery or transmission**  
36 **of prescriptions from the prescriber to the pharmacist or pharmacy for the purpose of:**

37           **(1) Influencing the prescribers choice of therapy;**

38           **(2) Influencing the patient's choice of pharmacist or pharmacy; or**

39           **(3) Altering the prescription information, including, but not limited to, switching**  
40 **the prescribed drug without the express authorization of the prescriber.**

**338.325. Medication Therapy Management Services (MTMS) programs shall be**  
2 **provided by pharmacy benefits managers to improve the pharmaceutical care of clients of**  
3 **their Missouri covered entities. Pharmacists and pharmacies shall be the providers of**  
4 **Medication Therapy Management Services (MTMS) programs. Appropriate compensation**  
5 **shall be paid to pharmacists for this pharmaceutical care. Medication Therapy**  
6 **Management Services (MTMS) programs shall be designed by the patient's pharmacy or**  
7 **pharmacist and physician of choice.**

**338.326. To avoid impairment of existing contracts, sections 338.316 to 338.329**  
2 **shall apply only to contracts entered into or renewed after August 28, 2006.**

2       **338.327. 1. The board of pharmacy shall adopt procedures for formal**  
3 **investigation of complaints concerning the failure of a pharmacy benefits manager to**  
4 **comply with sections 338.316 to 338.329.**

5       **2. The board of pharmacy shall receive complaints for failures to comply with**  
6 **sections 338.316 to 338.329 if the complaint involves a professional or patient health or**  
7 **safety issue. The board of pharmacy shall refer complaints under sections 338.316 to**  
8 **338.329 to the department of insurance if the complaint involves a business or financial**  
9 **issue.**

10       **338.328. 1. Sections 338.316 to 338.329 shall be supplemental to all other laws and**  
11 **shall govern pharmacy benefits managers notwithstanding any other law to the contrary.**

12       **2. Nothing in sections 338.316 to 338.329 shall be construed to limit the power of**  
13 **the Missouri state board of pharmacy to regulate the practice of pharmacy by any person,**  
14 **business, or other entity.**

15       **338.329. Nothing in sections 338.316 to 338.329 shall be construed to prohibit, alter,**  
16 **or limit in any way the power of the attorney general from pursuing a cause of action**  
17 **against a pharmacy benefits manager.**

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