

SECOND REGULAR SESSION

HOUSE BILL NO. 2152

97TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES MORRIS (Sponsor), SWAN, GANNON, PFAUTSCH,
FITZWATER, LYNCH, FRANKLIN, REMOLE, FRAKER, MESSENGER, LOVE, LANT, ALLEN,
FREDERICK AND ENGLISH (Co-sponsors).

6414H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 376, RSMo, by adding thereto one new section relating to pharmacy benefit managers, with a penalty provision.

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

Section A. Chapter 376, RSMo, is amended by adding thereto one new section, to be
2 known as section 376.388, to read as follows:

376.388. 1. As used in this section, unless the context requires otherwise, the
2 **following terms shall mean:**

3 (1) "Contracted pharmacy" or "pharmacy", a pharmacy located in Missouri
4 participating in the network of a pharmacy benefit manager through a direct contract or
5 through a contract with a pharmacy services administration organization or group
6 purchasing organization;

7 (2) "Drug product reimbursement", the amount paid by a pharmacy benefit
8 manager to a contracted pharmacy for the cost of the drug dispensed to a patient and does
9 not include a dispensing or professional fee;

10 (3) "Pharmacy benefit manager" or "PBM", an entity that contracts with
11 pharmacies on behalf of a health benefit plan, state agency, insurer, managed care
12 organization, or other third-party payer to provide pharmacy health benefit services or
13 administration;

14 (4) "Plan sponsor", the entity which contracts with the pharmacy benefit manager
15 to process pharmacy claims on behalf of such entity;

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.

(5) "Maximum allowable cost list" or "MAC list", a listing of drugs used by a pharmacy benefit manager setting the maximum allowable cost on which reimbursement to a pharmacy or pharmacist may be based;

(6) "Pharmacy benefit plan or program", a plan or program that pays for, reimburses, covers the cost of, or otherwise provides for pharmacist services to individuals who reside in or are employed in this state;

(7) "Pharmacist", a licensed pharmacist as defined in chapter 338;

(8) "Pharmacy", as such term is defined in chapter 338; and

(9) "Pharmacist services", products, goods, or services provided as a part of the practice of pharmacy in Missouri.

2. Before a pharmacy benefit manager places or continues a particular drug on a maximum allowable cost list, the drug:

(1) Shall be listed as therapeutically equivalent and pharmaceutically equivalent "A" or "B" rated in the United States Food and Drug Administration's most recent version of the "Orange Book" or "Green Book";

(2) Shall be available for purchase by each pharmacy in the state from national or regional wholesalers operating in Missouri; and

(3) Shall not be obsolete or temporarily available.

3. For every drug for which the PBM establishes a maximum allowable cost to determine the drug product reimbursement, the PBM shall:

(1) Include in the contract with the pharmacy, information identifying the national drug pricing compendia or sources used to obtain the drug price data and the methodology used in preparing the maximum allowable cost;

(2) Make available to a contracted pharmacy the drugs subject to maximum allowable cost and the actual maximum allowable cost for each drug;

(3) Provide a process for each pharmacy subject to the maximum allowable cost list to receive prompt notification of an update to the MAC list;

(4) Update its MAC list on a timely basis, but in no event longer than seven calendar days from a change in the methodology on which the MAC list is based or in the value of a variable involved in the methodology; and

(5) Within three business days after the applicable fill date, provide a reasonable administrative appeal procedure to allow pharmacies to challenge maximum allowable costs for a specific drug or drugs as:

(a) Not meeting the requirements of this section; or

(b) Being below the cost at which the pharmacy may obtain the drug.

51 4. A process to appeal, investigate, and resolve disputes regarding the maximum
52 allowable cost pricing shall include the following provisions:

53 (1) The right to appeal shall be limited to sixty days following the initial claim;

54 (2) The appeal shall be investigated and resolved within ten days;

55 (3) If the appeal is denied, the PBM shall provide the reason for the denial and
56 identify the national drug code of a drug product that may be purchased by contracted
57 pharmacies at a price at or below the maximum allowable cost;

58 (4) For a period of one year from August 28, 2014, a process to provide for
59 retroactive reimbursements shall be provided.

60 5. If a challenge under subsection 4 of this section is upheld, the PBM shall within
61 seven business days after receipt of the affirmative challenge:

62 (1) Make the change in the maximum allowable cost;

63 (2) Permit the challenging pharmacy or pharmacist to reverse and rebill the claim
64 in question; or

65 (3) Make the change under subdivision (1) of this subsection effective for each
66 similarly situated pharmacy as defined by the payer subject to the MAC list.

67 6. If the appeal is denied, the PBM shall provide the challenging pharmacy or
68 pharmacist the national drug code number from national or regional wholesalers operating
69 in Missouri.

70 7. A PBM is required to make the following disclosures to the plan sponsor:

71 (1) The PBM shall disclose the basis for the methodology and sources utilized to
72 establish a multi-source generic pricing list to the plan sponsor. A copy of an applicable
73 list shall be provided to the plan sponsor when updated;

74 (2) If a PBM utilizes a multi-source generic list for drugs dispensed at retail but
75 does not utilize the same list for drugs dispensed at mail, such fact shall be disclosed to the
76 plan sponsor in writing no later than twenty-one days prior to utilizing the list in the plan
77 sponsor's benefit; and

78 (3) A PBM shall disclose to the plan sponsor if it is using more than one multi-
79 source generic drug list in the contracted pharmacy network. If more than one list is used,
80 the PBM shall disclose to the plan sponsor any differences in reimbursement to the
81 pharmacies within the network regardless of their class of trade. The PBM shall also
82 disclose to the plan sponsor if the PBM is reimbursing the pharmacies at a different rate
83 than it is billing the plan sponsor.

84 8. This section does not apply to a MAC list maintained by the MO HealthNet
85 program.

86 **9. Any PBM who fails to comply with the provisions of this section shall be liable**
87 **to the plan sponsor or pharmacy as applicable in an amount equal to one hundred dollars**
88 **for the first violation, two hundred fifty dollars for the second violation, and one thousand**
89 **dollars for the third and any subsequent violation.**

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