

SECOND REGULAR SESSION

HOUSE BILL NO. 1627

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE WRIGHT.

3748H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 338.015, 376.387, and 376.388, RSMo, and to enact in lieu thereof three new sections relating to payments for prescription drugs.

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

Section A. Sections 338.015, 376.387, and 376.388, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 338.015, 376.387, and 376.388, to read as follows:

338.015. 1. The provisions of sections 338.010 to 338.015 shall not be construed to inhibit the patient's freedom of choice to obtain prescription services from any licensed pharmacist **or pharmacy**. [~~However, nothing in sections 338.010 to 338.315 abrogates the patient's ability to waive freedom of choice under any contract with regard to payment or coverage of prescription expense.~~]

2. All pharmacists may provide pharmaceutical consultation and advice to persons concerning the safe and therapeutic use of their prescription drugs.

3. All patients shall have the right to receive a written prescription from their prescriber to take to the facility of their choice or to have an electronic prescription transmitted to the facility of their choice.

4. No pharmacy benefits manager, as defined in section 376.388, shall prohibit or redirect by contract, or otherwise penalize or restrict, a covered person, as defined in section 376.387, from obtaining prescription services, consultation, or advice from a contracted pharmacy, as defined in section 376.388.

376.387. 1. For purposes of this section, the following terms shall mean:

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.

2 (1) "Covered person", ~~[the same meaning as such term is defined in section 376.1257]~~
3 **a policyholder, subscriber, enrollee, or other individual who receives prescription drug**
4 **coverage through a pharmacy benefits manager;**

5 (2) "Health benefit plan", the same meaning as such term is defined in section
6 376.1350;

7 (3) "Health carrier" or "carrier", the same meaning as such term is defined in section
8 376.1350;

9 (4) "Pharmacy", the same meaning as such term is defined in chapter 338;

10 (5) "Pharmacy benefits manager", the same meaning as such term is defined in
11 section 376.388;

12 **(6) "Pharmacy benefits manager rebate aggregator", any entity that negotiates**
13 **with a pharmaceutical manufacturer on behalf of a pharmacy benefits manager for a**
14 **rebate;**

15 **(7) "Rebate", any discount, negotiated concession, or other payment provided**
16 **by a pharmaceutical manufacturer, pharmacy, or health benefit plan to an entity to sell,**
17 **provide, pay, or reimburse a pharmacy or other entity in the state for the dispensation**
18 **or administration of a prescription drug on behalf of itself or another entity.**

19 2. No pharmacy benefits manager shall include a provision in a contract entered into
20 or modified on or after August 28, 2018, with a pharmacy or pharmacist that requires a
21 covered person to make a payment for a prescription drug at the point of sale in an amount
22 that exceeds the lesser of:

23 (1) The copayment amount as required under the health benefit plan; or

24 (2) The amount an individual would pay for a prescription if that individual paid with
25 cash.

26 3. A pharmacy or pharmacist shall have the right to:

27 **(1) Provide to a covered person information regarding the amount of the covered**
28 **person's cost share for a prescription drug, the covered person's cost of an alternative drug,**
29 **and the covered person's cost of the drug without adjudicating the claim through the**
30 **pharmacy benefits manager. Neither a pharmacy nor a pharmacist shall be proscribed by a**
31 **pharmacy benefits manager from discussing any such information or from selling a more**
32 **affordable alternative to the covered person; and**

33 **(2) Provide to a plan sponsor any information related to the sponsor's plan that**
34 **does not disclose information about a specific covered person's prescription use.**

35 4. No pharmacy benefits manager shall, directly or indirectly, charge or hold a
36 pharmacist or pharmacy responsible for any fee amount related to a claim that is not known at
37 the time of the claim's adjudication, unless the amount is a result of improperly paid claims
38 ~~[or charges for administering a health benefit plan].~~

39 5. ~~[This section shall not apply with respect to claims under Medicare Part D, or any~~
40 ~~other plan administered or regulated solely under federal law, and to the extent this section~~
41 ~~may be preempted under the Employee Retirement Income Security Act of 1974 for self-~~
42 ~~funded employer-sponsored health benefit plans.~~

43 6.] A pharmacy benefits manager shall notify in writing any health carrier with which
44 it contracts if the pharmacy benefits manager has a conflict of interest, any commonality of
45 ownership, or any other relationship, financial or otherwise, between the pharmacy benefits
46 manager and any other health carrier with which the pharmacy benefits manager contracts.

47 **[7.] 6. Any entity that enters into a contract to sell, provide, pay, or reimburse a**
48 **pharmacy in the state for prescription drugs on behalf of itself or another entity shall**
49 **define and apply the term "generic", with respect to prescription drugs, to mean any**
50 **"authorized generic drug", as defined in 21 CFR 314.3, approved under section 505(c)**
51 **of the Federal Food, Drug, and Cosmetic Act, as amended.**

52 7. An entity shall define and apply the term "rebate" as having the same
53 meaning given to the term in this section if the entity enters into a contract to sell,
54 provide, pay, negotiate rebates for, or reimburse a pharmacy, pharmacy benefits
55 manager, pharmacy benefits manager affiliate as defined in section 376.388, or
56 pharmacy benefits manager rebate aggregator for prescription drugs on behalf of itself
57 or another entity.

58 8. A pharmacy benefits manager that has contracted with an entity to provide
59 pharmacy benefits management services for such an entity or any person who negotiates
60 with a pharmacy benefits manager on behalf of a purchaser of health care benefits shall
61 owe a fiduciary duty to that entity or purchaser of health care benefits, and shall
62 discharge that duty in accordance with federal and state law.

63 9. Any entity that enters into a contract to sell, provide, pay, or reimburse a
64 pharmacy in the state for prescription drugs on behalf of itself or another entity shall
65 not prohibit a plan sponsor and a participating pharmacy from discussing any health
66 benefit plan information or costs.

67 10. It shall be unlawful for any pharmacy benefits manager or any person acting
68 on its behalf to charge a health benefit plan or payer a different amount for a
69 prescription drug's ingredient cost or dispensing fee than the amount the pharmacy
70 benefits manager reimburses a pharmacy for the prescription drug's ingredient cost or
71 dispensing fee if the pharmacy benefits manager retains the amount of any such
72 difference.

73 11. The department of commerce and insurance shall enforce this section.

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 benefits manager through a direct or indirect
5 contract;

6 (2) [~~"Health carrier", an entity subject to the insurance laws and regulations of this
7 state that contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse
8 any of the costs of health care services, including a sickness and accident insurance company,
9 a health maintenance organization, a nonprofit hospital and health service corporation, or any
10 other entity providing a plan of health insurance, health benefits, or health services, except
11 that such plan shall not include any coverage pursuant to a liability insurance policy, workers'
12 compensation insurance policy, or medical payments insurance issued as a supplement to a
13 liability policy;~~

14 (3) "Maximum allowable cost", the per-unit amount that a pharmacy benefits
15 manager reimburses a pharmacist for a prescription drug, excluding a dispensing or
16 professional fee;

17 (4) (3) "Maximum allowable cost list" or "MAC list", a listing of drug products that
18 meet the standard described in this section;

19 (5) (4) "Pharmacy", as such term is defined in chapter 338;

20 (6) (5) "Pharmacy benefits manager", an entity that [~~contracts with pharmacies on
21 behalf of health carriers or any health plan sponsored by the state or a political subdivision of
22 the state]~~ **administers or manages a pharmacy benefits plan or program;**

23 (6) **"Pharmacy benefits manager affiliate", a pharmacy or pharmacist that
24 directly or indirectly, through one or more intermediaries, owns or controls, is owned or
25 controlled by, or is under common ownership or control with a pharmacy benefits
26 manager;**

27 (7) **"Pharmacy benefits plan or program", a plan or program that pays for,
28 reimburses, covers the cost of, or otherwise provides for prescription drugs and
29 pharmacist services to individuals who reside in or are employed in this state.**

30 2. Upon each contract execution or renewal between a pharmacy benefits manager
31 and a pharmacy or between a pharmacy benefits manager and a pharmacy's contracting
32 representative or agent, such as a pharmacy services administrative organization, a pharmacy
33 benefits manager shall, with respect to such contract or renewal:

34 (1) Include in such contract or renewal the sources utilized to determine maximum
35 allowable cost and update such pricing information at least every seven days; and

36 (2) Maintain a procedure to eliminate products from the maximum allowable cost list
37 of drugs subject to such pricing or modify maximum allowable cost pricing at least every
38 seven days, if such drugs do not meet the standards and requirements of this section, in order
39 to remain consistent with pricing changes in the marketplace.

40 3. A pharmacy benefits manager shall reimburse pharmacies for drugs subject to
41 maximum allowable cost pricing that has been updated to reflect market pricing at least every
42 seven days as set forth under subdivision (1) of subsection 2 of this section.

43 4. A pharmacy benefits manager shall not place a drug on a maximum allowable cost
44 list unless there are at least two therapeutically equivalent multisource generic drugs, or at
45 least one generic drug available from at least one manufacturer, generally available for
46 purchase by network pharmacies from national or regional wholesalers.

47 5. (1) All contracts between a pharmacy benefits manager and a contracted pharmacy
48 or between a pharmacy benefits manager and a pharmacy's contracting representative or
49 agent, such as a pharmacy services administrative organization, shall include a process to
50 internally appeal, investigate, and resolve disputes regarding maximum allowable cost
51 pricing. The process shall include the following:

52 ~~[(1)]~~ (a) The right to appeal shall be limited to fourteen calendar days following the
53 reimbursement of the initial claim; and

54 ~~[(2)]~~ (b) A requirement that the pharmacy benefits manager shall respond to an
55 appeal described in this subsection no later than fourteen calendar days after the date the
56 appeal was received by such pharmacy benefits manager.

57 **(2) If a reimbursement to a contracted pharmacy is below the pharmacy's cost to**
58 **purchase the drug, the pharmacy may decline to dispense the prescription.**

59 **(3) A pharmacy benefits manager shall not reimburse a pharmacy or**
60 **pharmacist in the state an amount less than the amount that the pharmacy benefits**
61 **manager reimburses a pharmacy benefits manager affiliate for providing the same**
62 **pharmacist services.**

63 6. For appeals that are denied, the pharmacy benefits manager shall provide the
64 reason for the denial and identify the national drug code of a drug product that may be
65 purchased by contracted pharmacies at a price at or below the maximum allowable cost and,
66 when applicable, may be substituted lawfully.

67 7. If the appeal is successful, the pharmacy benefits manager shall:

68 (1) Adjust the maximum allowable cost price that is the subject of the appeal effective
69 on the day after the date the appeal is decided;

70 (2) Apply the adjusted maximum allowable cost price to all similarly situated
71 pharmacies as determined by the pharmacy benefits manager; and

72 (3) Allow the pharmacy that succeeded in the appeal to reverse and rebill the
73 pharmacy benefits claim giving rise to the appeal.

74 8. Appeals shall be upheld if:

75 (1) The pharmacy being reimbursed for the drug subject to the maximum allowable
76 cost pricing in question was not reimbursed as required under subsection 3 of this section; or

77 (2) The drug subject to the maximum allowable cost pricing in question does not meet
78 the requirements set forth under subsection 4 of this section.

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