

SECOND REGULAR SESSION

# HOUSE BILL NO. 1975

## 103RD GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE COOK.

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JOSEPH ENGLER, Chief Clerk

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### AN ACT

To repeal sections 338.015 and 376.388, RSMo, and to enact in lieu thereof two new sections relating to pharmacy benefits managers.

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

- Section A. Sections 338.015 and 376.388, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 338.015 and 376.388, to read as follows:
- 338.015. 1. **As used in this section, the following terms mean:**
- 2       (1) "Covered person", the same meaning given to the term in section 376.1257;
- 3       (2) "Health benefit plan", the same meaning given to the term in section
- 4 **376.1350;**
- 5       (3) "National Average Drug Acquisition Cost", the same meaning given to the
- 6 **term in section 376.388;**
- 7       (4) "Pharmacy benefits manager", the same meaning given to the term in section
- 8 **376.388.**
- 9       2. The provisions of sections 338.010 to 338.015 shall not be construed to inhibit the
- 10 patient's freedom of choice to obtain prescription services from any licensed pharmacist.
- 11 However, nothing in sections 338.010 to 338.315 abrogates the patient's ability to waive
- 12 freedom of choice under any contract with regard to payment or coverage of prescription
- 13 expense. **A waiver shall not be construed as to permit a pharmacy benefits manager to**
- 14 **engage in conduct prohibited under this section.**
- 15       [2-] 3. All pharmacists may provide pharmaceutical consultation and advice to
- 16 persons concerning the safe and therapeutic use of their prescription drugs.

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.

17       [3-] 4. All patients shall have the right to receive a written prescription from their  
18 prescriber to take to the facility of their choice or to have an electronic prescription  
19 transmitted to the facility of their choice.

20       5. Notwithstanding any provision of law to the contrary, a pharmacy benefits  
21 manager shall be subject to the following prohibitions:

22       (1) If a pharmacy or pharmacist has agreed to participate in a covered person's  
23 health benefit plan, the pharmacy benefits manager shall not prohibit or limit the  
24 covered person from selecting a pharmacy or pharmacist of his or her choice or impose  
25 a monetary advantage or penalty that would affect a covered person's choice. A  
26 monetary advantage or penalty includes a co-payment or coinsurance variation, a  
27 reduction in reimbursement for services, a promotion of one participating pharmacy  
28 over another, or a comparison of the reimbursement rates of a pharmacy against mail-  
29 order pharmacy reimbursement rates;

30       (2) A pharmacy benefits manager shall not impose upon a pharmacy or  
31 pharmacist, as a condition of participation in a third-party payer network, any course of  
32 study, accreditation, certification, or credentialing that is inconsistent with, more  
33 stringent than, or in addition to state requirements for licensure or certification and the  
34 administrative rules adopted by the board of pharmacy; and

35       (3) A pharmacy benefits manager shall not pay or reimburse a pharmacy or  
36 pharmacist in this state in an amount less than the most recently published National  
37 Average Drug Acquisition Cost for a prescription drug on the date that the prescription  
38 drug is administered or dispensed.

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~~ the maximum amount that a pharmacy benefits manager will  
17 reimburse a pharmacy for the cost of a multisource drug, medical product, or device.  
18 This amount does not include any additional dispensing fees or any additional  
19 reimbursement amounts required when reimbursement is based on the National  
20 Average Drug Acquisition Cost;

21 (4) "Maximum allowable cost list" or "MAC list", ~~[a listing of drug products that~~  
22 ~~meet the standard described in this section]~~ the multisource generic drugs, medical  
23 products, and devices for which a maximum allowable cost has been established by a  
24 pharmacy benefits manager or a purchaser;

25 (5) "National Average Drug Acquisition Cost", the monthly survey of retail  
26 pharmacies conducted by the federal Centers for Medicare and Medicaid Services to  
27 determine the average acquisition cost for drugs;

28 (6) "Other prescription drug or device services", services other than claims  
29 processing services that are provided directly or indirectly, whether in connection with  
30 or separate from claims processing services;

31 (7) "Pharmacy", as such term is defined in chapter 338;

32 ~~[(6)]~~ (8) "Pharmacy benefits manager", ~~[an entity that contracts with pharmacies on~~  
33 ~~behalf of health carriers or any health plan sponsored by the state or a political subdivision of~~  
34 ~~the state]~~ a person, business, or entity, including a wholly or partially owned or  
35 controlled subsidiary of such person, business, or entity, that provides claims processing  
36 services or other prescription drug or device services, or both, for health benefit plans  
37 or health carriers. The term "pharmacy benefits manager" shall not include:

38 (a) Health care professionals licensed in this state;

39 (b) Health care facilities licensed in this state;

40 (c) Consultants who only provide advice as to the selection or performance of a  
41 pharmacy benefits manager; or

42 (d) Entities that provide claims processing services or other prescription drug or  
43 device services, or both, exclusively for their enrollees;

44 (9) "Pharmacy benefits manager affiliate", any pharmacy or pharmacist that  
45 directly or indirectly, through one or more intermediaries, is owned by, under common  
46 ownership with, or controlled by a pharmacy benefits manager.

47 2. Upon each contract execution or renewal between a pharmacy benefits manager  
48 and a pharmacy or between a pharmacy benefits manager and a pharmacy's contracting  
49 representative or agent, such as a pharmacy services administrative organization, a pharmacy  
50 benefits manager shall, with respect to such contract or renewal:

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

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

57 3. A pharmacy benefits manager shall reimburse pharmacies for drugs subject to  
58 maximum allowable cost pricing that has been updated to reflect market pricing at least every  
59 seven days as set forth under subdivision (1) of subsection 2 of this section. **For each claim,**  
60 **the reimbursement shall be the greater of the maximum allowable cost pricing or the**  
61 **current National Average Drug Acquisition Cost pricing.**

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

66 5. (1) All contracts between a pharmacy benefits manager and a contracted pharmacy  
67 or between a pharmacy benefits manager and a pharmacy's contracting representative or  
68 agent, such as a pharmacy services administrative organization, shall include a process to  
69 internally appeal, investigate, and resolve disputes regarding **the National Average Drug**  
70 **Acquisition Cost pricing and** maximum allowable cost pricing. The process shall include  
71 the following:

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

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

77 (2) **A pharmacy benefits manager shall not retaliate against a contracted**  
78 **pharmacy for exercising its right to appeal to the pharmacy benefits manager.**

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

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

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

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

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

90 8. Appeals shall be upheld if:

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

93 (2) The drug subject to the maximum allowable cost pricing in question does not meet  
94 the requirements set forth under subsection 4 of this section; **or**

95 (3) **The drug subject to maximum allowable cost pricing was reimbursed at a**  
96 **rate lower than the National Average Drug Acquisition Cost pricing.**

97 9. A pharmacy benefits manager shall reimburse any pharmacist or pharmacy  
98 located in this state in an amount equal to the amount the pharmacy benefits manager  
99 reimburses a pharmacy benefits manager affiliate for dispensing the same prescription  
100 drug.

101 10. In addition to the reimbursements determined by maximum allowable cost  
102 pricing and the National Average Drug Acquisition Cost pricing, a pharmacy benefits  
103 manager shall reimburse each pharmacy or pharmacist a dispensing fee in an amount  
104 not less than ninety percent of the MO HealthNet professional dispensing fee in effect on  
105 the date of service.

106 11. If any provision of this section or its application to any person or  
107 circumstance is held invalid, such determination shall not affect the provisions or  
108 applications of this section that may be given effect without the invalid provision or  
109 application, and to that end the provisions of this section are severable.

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