

FIRST REGULAR SESSION  
[ P E R F E C T E D ]  
SENATE SUBSTITUTE FOR

# SENATE BILL NO. 457

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SATER.

Offered April 16, 2015.

Senate Substitute adopted, April 16, 2015.

Taken up for Perfection April 16, 2015. Bill declared Perfected and Ordered Printed.

ADRIANE D. CROUSE, Secretary.

2178S.02P

## AN ACT

To repeal section 338.200, RSMo, and to enact in lieu thereof three new sections relating to pharmacy.

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

Section A. Section 338.200, RSMo, is repealed and three new sections  
2 enacted in lieu thereof, to be known as sections 338.075, 338.200, and 376.388,  
3 to read as follows:

**338.075. 1. All licensees, registrants, and permit holders of the  
2 board shall report to the board:**

3 **(1) Any final adverse action taken by another licensing state,  
4 jurisdiction, or government agency against any license, permit, or  
5 authorization held by the person or entity to practice or operate as a  
6 pharmacist, intern pharmacist, pharmacy technician, pharmacy, drug  
7 distributor, drug manufacturer, or drug outsourcing facility. For  
8 purposes of this section, "adverse action" shall include, but is not  
9 limited to, revocation, suspension, censure, probation, disciplinary  
10 reprimand, or disciplinary restriction of a license, permit, or other  
11 authorization or a voluntary surrender of such license, permit, or other  
12 authorization in lieu of discipline or adverse action;**

13 **(2) Any surrender of a license or authorization to practice or  
14 operate as a pharmacist, intern pharmacist, pharmacy technician,  
15 pharmacy, drug distributor, drug manufacturer, or drug outsourcing  
16 facility while under disciplinary investigation by another licensing**

17 state, jurisdiction, or governmental agency, and;

18       **(3) Any exclusion to participate in any state or federally funded**  
19 **health care program such as Medicare, Medicaid, or MO HealthNet for**  
20 **fraud, abuse, or submission of any false or fraudulent claim, payment,**  
21 **or reimbursement request.**

22       **2. Reports shall be submitted as provided by the board by rule.**

23       **3. The board shall promulgate rules to implement the provisions**  
24 **of this section. Any rule or portion of a rule, as that term is defined in**  
25 **section 536.010 that is created under the authority delegated in this**  
26 **section shall become effective only if it complies with and is subject to**  
27 **all of the provisions of chapter 536, and, if applicable, section**  
28 **536.028. This section and chapter 536 are nonseverable and if any of**  
29 **the powers vested with the general assembly pursuant to chapter 536,**  
30 **to review, to delay the effective date, or to disapprove and annul a rule**  
31 **are subsequently held unconstitutional, then the grant of rulemaking**  
32 **authority and any rule proposed or adopted after August 28, 2015, shall**  
33 **be invalid and void.**

338.200. 1. In the event a pharmacist is unable to obtain refill  
2 authorization from the prescriber due to death, incapacity, or when the  
3 pharmacist is unable to obtain refill authorization from the prescriber, a  
4 pharmacist may dispense an emergency supply of medication if:

5       (1) In the pharmacist's professional judgment, interruption of therapy  
6 might reasonably produce undesirable health consequences;

7       (2) The pharmacy previously dispensed or refilled a prescription from the  
8 applicable prescriber for the same patient and medication;

9       (3) The medication dispensed is not a controlled substance;

10       (4) The pharmacist informs the patient or the patient's agent either  
11 verbally, electronically, or in writing at the time of dispensing that authorization  
12 of a prescriber is required for future refills; and

13       (5) The pharmacist documents the emergency dispensing in the patient's  
14 prescription record, as provided by the board by rule.

15       2. (1) If the pharmacist is unable to obtain refill authorization from the  
16 prescriber, the amount dispensed shall be limited to the amount determined by  
17 the pharmacist within his or her professional judgment as needed for the  
18 emergency period, provided the amount dispensed shall not exceed a seven-day  
19 supply.

20 (2) In the event of prescriber death or incapacity or inability of the  
21 prescriber to provide medical services, the amount dispensed shall not exceed a  
22 thirty-day supply.

23 3. Pharmacists or permit holders dispensing an emergency supply  
24 pursuant to this section shall promptly notify the prescriber or the prescriber's  
25 office of the emergency dispensing, as required by the board by rule.

26 4. An emergency supply may not be dispensed pursuant to this section if  
27 the pharmacist has knowledge that the prescriber has otherwise prohibited or  
28 restricted emergency dispensing for the applicable patient.

29 **5. The determination to dispense an emergency supply of**  
30 **medication under this section shall only be made by a pharmacist**  
31 **licensed by the board.**

32 **6.** The board shall promulgate rules to implement the provisions of this  
33 section. Any rule or portion of a rule, as that term is defined in section 536.010,  
34 that is created under the authority delegated in this section shall become effective  
35 only if it complies with and is subject to all of the provisions of chapter 536 and,  
36 if applicable, section 536.028. This section and chapter 536 are nonseverable and  
37 if any of the powers vested with the general assembly pursuant to chapter 536 to  
38 review, to delay the effective date, or to disapprove and annul a rule are  
39 subsequently held unconstitutional, then the grant of rulemaking authority and  
40 any rule proposed or adopted after August 28, 2013, shall be invalid and void.

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

3 (1) "Contracted pharmacy" or "pharmacy", a pharmacy located in  
4 Missouri participating in the network of a pharmacy benefit manager  
5 through a direct or indirect contract;

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

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

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

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

22           (6) "Pharmacy benefits manager", an entity that contracts with  
23 pharmacies on behalf of health carriers licensed by the department of  
24 insurance, financial institutions and professional registration under  
25 chapter 376.

26           2. Upon each contract execution or renewal between a pharmacy  
27 benefit manager and a pharmacy or between a pharmacy benefits  
28 manager and a pharmacy's contracting representative or agent, such as  
29 a pharmacy services administrative organization, a pharmacy benefits  
30 manager shall, with respect to such contract or renewal:

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

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

39           3. A pharmacy benefits manager shall reimburse pharmacies for  
40 drugs subject to maximum allowable cost pricing based upon pricing  
41 information which has been updated within seven days as set forth in  
42 subdivision (1) of subsection 2 of this section.

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

49           5. All contracts between a pharmacy benefits manager and a  
50 contracted pharmacy or between a pharmacy benefits manager and a  
51 pharmacy's contracting representative or agent, such as a pharmacy  
52 services administrative organization, shall include a process to

53 internally appeal, investigate, and resolve disputes regarding maximum  
54 allowable cost pricing. The process shall include the following:

55 (1) The right to appeal shall be limited to fourteen calendar days  
56 following the reimbursement of the initial claim; and

57 (2) A requirement that the health carrier or pharmacy benefits  
58 manager shall respond to an appeal described in this subsection no  
59 later than fourteen calendar days after the date the appeal was  
60 received by such health carrier or pharmacy benefits manager.

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

65 7. If the appeal is successful, the health carrier or pharmacy  
66 benefits manager shall:

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

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

72 (3) Allow the pharmacy that succeeded in the appeal to reverse  
73 and rebill the 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  
76 maximum allowable cost pricing in question was not reimbursed as  
77 required in subsection 3 of this section; or

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

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