SECOND REGULAR SESSION

[TRULY AGREED TO AND FINALLY PASSED]

CONFERENCE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 1068

94TH GENERAL ASSEMBLY

2008

4717S.06T

AN ACT

To amend chapter 338, RSMo, by adding thereto three new sections relating to pharmacy.

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

Section A. Chapter 338, RSMo, is amended by adding thereto three new sections, to be known as sections 338.410, 338.600, and 338.650, to read as follows:

338.410. 1. There is hereby created within the department of health and senior services the "Missouri Fibromyalgia Awareness Initiative Program". The primary target population for such program shall be women between twenty and sixty years of age.

2. The department shall appoint and convene the "Missouri Fibromyalgia Panel" to be comprised of individuals who shall act in a voluntary capacity with knowledge and expertise regarding fibromyalgia research, prevention, educational programs, and consumer needs, to guide program development. The panel shall seek and is authorized to accept private, federal, or other public financial support, grants, or other appropriate moneys to support the program. The department shall provide the panel and program necessary administrative services and support.

3. The panel shall have the following duties:

(1) In consultation with the National Fibromyalgia Association, to raise at least fifty thousand dollars through private funding for the purpose of establishing a public information and outreach campaign for issues related to fibromyalgia, including appropriate educational material to promote early diagnosis and treatment, prevention of complications, improvement of quality of life at home and in the workplace, and addressing mental health and disability issues of

fibromyalgia patients;

(2) To work with other state and local agencies to promote fibromyalgia education and training programs for physicians and other health professionals; and

(3) To examine the various pharmaceutical treatments available for fibromyalgia patients.

4. This section shall be implemented only to the extent that the panel obtains private funding for the purpose of this section.

338.600. 1. Notwithstanding any other provision of law to the contrary, when an audit of the records of a pharmacy licensed in this state is conducted by a managed care company, insurance company, third-party payor, or any entity that represents such companies or groups, such audit shall be conducted in accordance with the following:

(1) The entity conducting the initial on-site audit shall provide the pharmacy with notice at least one week prior to conducting the initial on-site audit for each audit cycle;

(2) Any audit which involves clinical judgment shall be conducted by or in consultation with a licensed pharmacist;

(3) Any clerical error, recordkeeping error, typographical error, or scrivener's error regarding a required document or record shall not constitute fraud or grounds for recoupment, so long as the prescription was otherwise legally dispensed and the claim was otherwise materially correct; except that, such claims may be otherwise subject to recoupment of overpayments or payment of any discovered underpayment. No claim arising under this subdivision shall be subject to criminal penalties without proof of intent to commit fraud;

(4) A pharmacy may use the records of a hospital, physician, or other authorized practitioner of the healing arts involving drugs or medicinal supplies written or transmitted by any means of communication for purposes of validating the pharmacy record with respect to orders or refills of a legend or narcotic drug. Electronically stored images of prescriptions, electronically created annotations and other related supporting documentation shall be considered valid prescription records. Hard copy and electronic signature logs that indicate the delivery of pharmacy services shall be considered valid proof of receipt of such services by a program enrollee;

(5) A finding of an overpayment or underpayment may be a

projection based on the number of patients served and having a similar diagnosis or on the number of similar orders or refills for similar drugs; except that, recoupment of claims shall be based on the actual overpayment or underpayment unless the projection for overpayment or underpayment is part of a settlement as agreed to by the pharmacy;

(6) Each pharmacy shall be audited under the same standards and parameters as other pharmacies audited by the entity;

(7) A pharmacy shall be allowed at least thirty days following receipt of the preliminary audit report in which to produce documentation to address any discrepancy found during an audit;

(8) The period covered by the audit shall not exceed a two-year period beginning two years prior to the initial date of the on-site portion of the audit unless otherwise provided by contractual agreement or if there has been a previous finding of fraud or as otherwise provided by state or federal law;

(9) An audit shall not be initiated or scheduled during the first three business days of any month due to the high volume of prescriptions filled during such time unless otherwise consented to by the pharmacy;

(10) The preliminary audit report shall be delivered to the pharmacy within one hundred twenty days after conclusion of the audit, with reasonable extensions permitted. A final audit report shall be delivered to the pharmacy within six months of receipt by the pharmacy of the preliminary audit report or final appeal, as provided for in subsection 3 of this section, whichever is later;

(11) Notwithstanding any other provision in this subsection, the entity conducting the audit shall not use the accounting practice of extrapolation in calculating recoupments or penalties for audits, except as otherwise authorized under subdivision (5) of this subsection.

2. Recoupments of any disputed moneys shall only occur after final internal disposition of the audit, including the appeals process set forth in subsection 3 of this section. Should the identified discrepancy for an individual audit exceed twenty five thousand dollars, future payments to the pharmacy in excess of twenty five thousand dollars may be withheld pending finalization of the audit.

3. Each entity conducting an audit shall establish an appeals process, lasting no longer than six months, under which a licensed

pharmacy may appeal an unfavorable preliminary audit report to the entity. If, following such appeal, the entity finds that an unfavorable audit report or any portion thereof is unsubstantiated, the entity shall dismiss the audit report or such portion without the necessity of any further proceedings.

4. Each entity conducting an audit shall provide a copy of the final audit report, after completion of any appeal process, to the plan sponsor.

5. This section shall not apply to any investigative audit that involves probable fraud, willful misrepresentation, or abuse.

6. This section shall not apply to any audit conducted as part of any inspection or investigation conducted by any governmental entity or law enforcement agency.

338.650. There is hereby established in the state treasury the "Pharmacy Rebates Fund". Any revenues received by the state, either directly or indirectly, from pharmaceutical manufacturer rebates as required by federal law, except where federal law requires rebates to be accounted for otherwise, or state supplemental rebates as defined in state plan amendments shall be deposited into the pharmacy rebates fund and shall be used only in the MO HealthNet pharmacy program or its successor programs authorized under Title XIX, Public Law 89-97, 1965 amendments to the federal Social Security Act, 42 U.S.C. Section 301 et seq.

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