FIRST REGULAR SESSION

SENATE BILL NO. 325

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SATER.

Read 1st time January 27, 2015, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1500S.01I

AN ACT

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

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 known as section 376.388, to read as follows:

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

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

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

(3) "Pharmacy benefit manager" or "PBM", an entity not licensed by the department of insurance, financial institutions and professional registration that contracts with pharmacies on behalf of a plan sponsor;

(4) "Plan sponsor", the entity which contracts with the pharmacy benefit manager to process claims submitted by pharmacies for reimbursement for drug products included on the maximum allowable cost list;

(5) "Maximum allowable cost list" or "MAC list", a listing of drug products that meet the standard described in subdivision (1) of subsection 2 of this section;

(6) "Pharmacy", as such term is defined in chapter 338.

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 in the United States Food and Drug Administration's most recent version of the "Orange Book" or its successor and eligible to be substituted by a pharmacist under section 338.056;

(2) Shall be available for purchase by a pharmacy, contracted with the PBM, in the state from national or regional wholesalers operating in Missouri; and

(3) Shall not be obsolete or only 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) Make available to a contracted pharmacy the drug products subject to the MAC list and the actual maximum allowable cost for each drug;

(2) Provide to each pharmacy, with a contract with a PBM, subject to the MAC list access to current date of service MAC list;

(3) Provide an appeal procedure as described in subsection 4 of this section 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.

4. A PBM shall provide a reasonable process to appeal the maximum allowable cost amount which shall include the following provisions:

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

(2) The appeal process and decision notification by the PBM shall not exceed a ten-day period;

(3) If the appeal is denied, the PBM shall provide the reason for the denial and identify the eleven digit national drug code of a drug product that may be purchased in accordance with this act.

5. If a determination is made based on an appeal under subsection 4 of this section that an additional reimbursement for a drug product is required, then such amount shall be paid to the

pharmacy at the next regular payment cycle from the PBM to such pharmacy.

6. If a PBM utilizes a MAC list for drugs dispensed at retail but does not utilize the same list for drugs dispensed at mail, and the result to the plan sponsor is a higher cost to the plan sponsor or their employees, such fact shall be disclosed to the plan sponsor in writing no later than twenty-one days prior to utilizing the list in the plan sponsor's benefit.

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

8. A PBM shall have a fiduciary responsibility to the plan sponsor.

9. A PBM shall disclose to the plan sponsor which drugs they have defined as generic or brand differently than as defined by the United States Food and Drug Administration.

10. Any PBM that fails to comply with the provisions of this section shall be subject to penalties allowed under section 374.049.

11. The director of the department of insurance, financial institutions and professional registration shall promulgate administrative rules to administer the provisions in this section, which shall establish the appropriate levels of violations under section 374.049 for noncompliance with this section. Any rule or portion of a rule, as that term is defined in section 536.010 that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2015, shall be invalid and void.

✓