5458S.03F

SENATE SUBSTITUTE

FOR

SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILLS NOS. 865 & 866

AN ACT

To repeal sections 338.270 and 338.347, RSMo, and to enact in lieu thereof five new sections relating to pharmacy.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

Section A. Sections 338.270 and 338.347, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 338.075, 338.270, 338.347, 376.379, and 376.388, to read as follows:

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

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

permit, or other authorization in lieu of discipline or adverse action;

(2) Any surrender of a license or authorization to practice or operate as a pharmacist, intern pharmacist, pharmacy technician, pharmacy, drug distributor, drug manufacturer, or drug outsourcing facility while under disciplinary investigation by another licensing state, jurisdiction, or governmental agency, and;

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

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

3. The board shall promulgate rules to implement the provisions of 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, 2016, shall be invalid and void.

338.270. 1. Application blanks for renewal permits shall be mailed to each permittee on or before the first day of the

month in which the permit expires and, if application for renewal of permit is not made before the first day of the following month, the existing permit, or renewal thereof, shall lapse and become null and void upon the last day of that month.

2. The board shall not renew a nonresident pharmacy license if the renewal applicant does not hold a current pharmacy license or its equivalent in the state in which the nonresident pharmacy is located.

338.347. 1. Application blanks for renewal of license shall be mailed to each licensee on or before the first day of the month in which the license expires and, if application for renewal of license with required fee is not made before the first day of the following month, the existing license, or renewal thereof, shall lapse and become null and void upon the last day of that month.

2. The board shall not renew an out-of-state wholesale drug distributor, out-of-state pharmacy distributor, or drug distributor license or registration if the renewal applicant does not hold a current distributor license or its equivalent in the state or jurisdiction in which the distribution facility is located, or, if a drug distributor registrant, the entity is not authorized and in good standing to operate as a drug manufacturer with the Food and Drug Administration or within the state or jurisdiction where the facility is located.

376.379. 1. A health carrier or managed care plan offering a health benefit plan in this state that provides prescription drug coverage shall offer, as part of the plan, medication synchronization services developed by the health carrier or

managed care plan that allow for the alignment of refill dates for an enrollee's prescription drugs that are covered benefits.

2. Under its medication synchronization services, a health carrier or managed care plan shall:

(1) Not charge an amount in excess of the otherwise applicable copayment amount under the health benefit plan for dispensing a prescription drug in a quantity that is less than the prescribed amount if:

(a) The pharmacy dispenses the prescription drug in accordance with the medication synchronization services offered under the health benefit plan; and

(b) A participating provider dispenses the prescription drug;

(2) Provide a full dispensing fee to the pharmacy that dispenses the prescription drug to the covered person.

3. For the purposes of this section the terms "health carrier", "managed care plan", "health benefit plan", "enrollee", and "participating provider" shall have the same meaning as defined in section 376.1350.

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 benefits manager through a direct or indirect contract;

(2) "Health carrier", an entity subject to the insurance laws and regulations of this state that contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including a sickness

and accident insurance company, a health maintenance organization, a nonprofit hospital and health service corporation, or any other entity providing a plan of health insurance, health benefits, or health services, except that such plan shall not include any coverage pursuant to a liability insurance policy, workers' compensation insurance policy, or medical payments insurance issued as a supplement to a liability policy;

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

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

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

(6) "Pharmacy benefits manager", an entity that contracts with pharmacies on behalf of health carriers or any health plan sponsored by the state or a political subdivision of the state.

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

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

(2) Maintain a procedure to eliminate products from the

maximum allowable cost list of drugs subject to such pricing or modify maximum allowable cost pricing at least every seven days if such drugs do not meet the standards and requirements of this section in order to remain consistent with pricing changes in the marketplace.

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

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

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

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

(2) A requirement that the pharmacy benefits manager shall respond to an appeal described in this subsection no later than fourteen calendar days after the date the appeal was received by

such pharmacy benefits manager.

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

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

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

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

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

8. Appeals shall be upheld if:

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

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