SENATE COMMITTEE SUBSTITUTE

FOR

HOUSE COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 3009

AN ACT

To repeal sections 338.010, 338.012, 338.333, 338.600, and 376.387, RSMo, and to enact in lieu thereof nine new sections relating to pharmacies.

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

Section A. Sections 338.010, 338.012, 338.333, 338.600, and 376.387, RSMo, are repealed and nine new sections enacted in lieu thereof, to be known as sections 338.010, 338.012, 338.206, 338.208, 338.312, 338.333, 338.600, 376.387, and 376.399, to read as follows:

338.010. 1. The "practice of pharmacy" includes:

(1) The interpretation, implementation, and evaluation of medical prescription orders, including any legend drugs under 21 U.S.C. Section 353, and the receipt, transmission, or handling of such orders or facilitating the dispensing of such orders;

(2) The designing, initiating, implementing, and monitoring of a medication therapeutic plan in accordance with the provisions of this section;

(3) The compounding, dispensing, labeling, and administration of drugs and devices pursuant to medical prescription orders;

(4) The ordering and administration of vaccines approved or authorized by the U.S. Food and Drug Administration, <u>as of January 1, 2026, or thereafter,</u> excluding vaccines for cholera, monkeypox, Japanese encephalitis, typhoid, rabies, yellow fever, tick-borne

encephalitis, anthrax, tuberculosis, dengue, Hib, polio, rotavirus, smallpox, **[**and any vaccine approved after January 1, 2023**]** or any vaccine that is not jointly included by joint rules promulgated by the board of pharmacy and the state board of registration for the healing arts, to persons at least seven years of age or the age recommended by the Centers for Disease Control and Prevention, whichever is older, pursuant to joint promulgation of rules established by the board of pharmacy and the state board of registration for the healing arts unless rules are established under a state of emergency as described in section 44.100;

(5) The participation in drug selection according to state law and participation in drug utilization reviews;

(6) The proper and safe storage of drugs and devices and the maintenance of proper records thereof;

(7) Consultation with patients and other health care practitioners, and veterinarians and their clients about legend drugs, about the safe and effective use of drugs and devices;

(8) The prescribing and dispensing of any nicotine replacement therapy product under section 338.665;

(9) The dispensing of HIV postexposure prophylaxis pursuant to section 338.730; and

(10) The offering or performing of those acts, services, operations, or transactions necessary in the conduct, operation, management and control of a pharmacy.

2. No person shall engage in the practice of pharmacy unless he or she is licensed under the provisions of this chapter.

3. This chapter shall not be construed to prohibit the use of auxiliary personnel under the direct supervision of a pharmacist from assisting the pharmacist in any of his or her duties. This assistance in no way is intended to

relieve the pharmacist from his or her responsibilities for compliance with this chapter and he or she will be responsible for the actions of the auxiliary personnel acting in his or her assistance.

4. This chapter shall not be construed to prohibit or interfere with any legally registered practitioner of medicine, dentistry, or podiatry, or veterinary medicine only for use in animals, or the practice of optometry in accordance with and as provided in sections 195.070 and 336.220 in the compounding, administering, prescribing, or dispensing of his or her own prescriptions.

5. A pharmacist with a certificate of medication therapeutic plan authority may provide medication therapy services pursuant to a written protocol from a physician licensed under chapter 334 to patients who have established a physician-patient relationship, as described in subdivision (1) of subsection 1 of section 191.1146, with the protocol physician. The written protocol authorized by this section shall come only from the physician and shall not come from a nurse engaged in a collaborative practice arrangement under section 334.104, or from a physician assistant engaged in a collaborative practice arrangement under section 334.735.

6. Nothing in this section shall be construed as to prevent any person, firm or corporation from owning a pharmacy regulated by sections 338.210 to 338.315, provided that a licensed pharmacist is in charge of such pharmacy.

7. Nothing in this section shall be construed to apply to or interfere with the sale of nonprescription drugs and the ordinary household remedies and such drugs or medicines as are normally sold by those engaged in the sale of general merchandise.

8. No health carrier as defined in chapter 376 shall require any physician with which they contract to enter into a written protocol with a pharmacist for medication therapeutic services.

9. This section shall not be construed to allow a pharmacist to diagnose or independently prescribe pharmaceuticals.

10. The state board of registration for the healing arts, under section 334.125, and the state board of pharmacy, under section 338.140, shall jointly promulgate rules regulating the use of protocols for medication therapy services. Such rules shall require protocols to include provisions allowing for timely communication between the pharmacist and the protocol physician or similar body authorized by this section, and any other patient protection provisions deemed appropriate by both boards. In order to take effect, such rules shall be approved by a majority vote of a quorum of each board. Neither board shall separately promulgate rules regulating the use of protocols for medication therapy services. 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, 2007, shall be invalid and void.

11. The state board of pharmacy may grant a certificate of medication therapeutic plan authority to a

licensed pharmacist who submits proof of successful completion of a board-approved course of academic clinical study beyond a bachelor of science in pharmacy, including but not limited to clinical assessment skills, from a nationally accredited college or university, or a certification of equivalence issued by a nationally recognized professional organization and approved by the board of pharmacy.

12. Any pharmacist who has received a certificate of medication therapeutic plan authority may engage in the designing, initiating, implementing, and monitoring of a medication therapeutic plan as defined by a written protocol from a physician that may be specific to each patient for care by a pharmacist.

13. Nothing in this section shall be construed to allow a pharmacist to make a therapeutic substitution of a pharmaceutical prescribed by a physician unless authorized by the written protocol or the physician's prescription order.

14. "Veterinarian", "doctor of veterinary medicine", "practitioner of veterinary medicine", "DVM", "VMD", "BVSe", "BVMS", "BSe (Vet Science)", "VMB", "MRCVS", or an equivalent title means a person who has received a doctor's degree in veterinary medicine from an accredited school of veterinary medicine or holds an Educational Commission for Foreign Veterinary Graduates (EDFVG) certificate issued by the American Veterinary Medical Association (AVMA).

15. In addition to other requirements established by the joint promulgation of rules by the board of pharmacy and the state board of registration for the healing arts:

(1) A pharmacist shall administer vaccines by protocol in accordance with treatment guidelines established by the Centers for Disease Control and Prevention (CDC);

(2) A pharmacist who is administering a vaccine shall request a patient to remain in the pharmacy a safe amount of time after administering the vaccine to observe any adverse reactions. Such pharmacist shall have adopted emergency treatment protocols.

16. In addition to other requirements by the board, a pharmacist shall receive additional training as required by the board and evidenced by receiving a certificate from the board upon completion, and shall display the certification in his or her pharmacy where vaccines are delivered.

17. A pharmacist shall inform the patient that the administration of a vaccine will be entered into the ShowMeVax system, as administered by the department of health and senior services. The patient shall attest to the inclusion of such information in the system by signing a form provided by the pharmacist. If the patient indicates that he or she does not want such information entered into the ShowMeVax system, the pharmacist shall provide a written report within fourteen days of administration of a vaccine to the patient's health care provider, if provided by the patient, containing:

(1) The identity of the patient;

(2) The identity of the vaccine or vaccines administered;

(3) The route of administration;

(4) The anatomic site of the administration;

(5) The dose administered; and

(6) The date of administration.

18. A pharmacist licensed under this chapter may order and administer vaccines approved or authorized by the U.S. Food and Drug Administration to address a public health need, as lawfully authorized by the state or federal

government, or a department or agency thereof, during a state or federally declared public health emergency.

338.012. 1. A pharmacist with a certificate of medication therapeutic plan authority may provide influenza, group A streptococcus, and COVID-19 medication therapy services pursuant to **[**a statewide standing order issued by the director or chief medical officer of the department of health and senior services if that person is a licensed physician, or a licensed physician designated by the department of health and senior services**]** rules established by the board of pharmacy and the state board of registration for the healing arts, as described in this section.

2. This section shall not be construed to allow a pharmacist to diagnose or independently prescribe pharmaceuticals.

3. The state board of registration for the healing arts, pursuant to section 334.125, and the state board of pharmacy, pursuant to section 338.140, shall jointly 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, 2023, shall be invalid and void.

338.206. 1. As used in this section, the term "medical device" shall mean equipment that is furnished by a

supplier or a home health agency and meets the following conditions:

(1) Is a device classified by the United States Food and Drug Administration as a Class I or Class II under 21 U.S.C. Section 360 and its implementing regulations under 21 CFR Parts 860 to 892;

(2) Is primarily and customarily used to serve a medical purpose;

(3) Generally is not useful to an individual in the absence of an illness or injury; and

(4) Is appropriate for use in the home.

2. Notwithstanding any provision of this chapter to the contrary, pharmacists may prescribe any medical devices authorized by rule promulgated jointly by the state board of registration for the healing arts and the board of pharmacy in accordance with subsection 3 of this section.

3. The state board of registration for the healing arts, pursuant to section 334.125, and the board of pharmacy, pursuant to section 338.140, shall jointly promulgate rules to implement the provisions of this section. Such rules shall be written and effective within six months of the effective date of this act.

4. 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, 2026, shall be invalid and void.

338.208. Notwithstanding any other provision of law to the contrary, a pharmacist may dispense ivermectin and hydroxychloroquine to a person, without requiring a prescription order from a licensed health care practitioner, upon the approval of a warning label for the use and indication in accordance with any written, standardized procedures or protocols for the pharmacist issued by the board of pharmacy, including, if required, providing the person with instructions on the proper use of ivermectin and hydroxychloroquine.

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

(1) "Declared state disaster or emergency", a disaster or emergency event for which a governor's state of emergency proclamation has been issued or that the President of the United States has declared to be a major disaster or emergency;

(2) "Disaster period", the period of time that begins ten days before a governor's proclamation of a state of emergency or the declaration by the President of the United States of a major disaster or emergency, whichever occurs first, and extending for a period of sixty calendar days following the end of the period specified in the proclamation or declaration or sixty calendar days from the proclamation or declaration if no end is provided. The governor may extend the disaster period as warranted;

(3) "Pharmacy", the same meaning given to the term in section 338.210.

2. Notwithstanding any provision of law to contrary, the board of pharmacy shall have the authority to waive compliance with any Missouri rules and regulations for a

licensed pharmacy that is domiciled or headquartered in this state when such pharmacy is dispensing, shipping, or delivering prescription drugs into another state or United States territory that is experiencing a declared state disaster or emergency, provided that:

(1) The pharmacy is a licensed pharmacy in good standing under this chapter and is authorized to ship prescription drugs into the state or territory in question;

(2) The pharmacy is responding to an active declared state disaster or emergency;

(3) The pharmacy complies with all emergency rules and regulations for pharmacies established by the state or territory for the duration of the disaster period;

(4) The pharmacy complies with all applicable federal laws and regulations; and

(5) The waiver applies only to prescription drugs dispensed, shipped, or delivered to residents or health care facilities located within the geographic area specified in the declared state disaster or emergency.

3. The board of pharmacy may 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, 2026, shall be invalid and void.

338.333. 1. Except as otherwise provided by the board of pharmacy by rule in the event of an emergency or to alleviate a supply shortage, no person or distribution outlet shall act as a wholesale drug distributor, pharmacy distributor, drug outsourcer, or third-party logistics provider without first obtaining license to do so from the Missouri board of pharmacy and paying the required fee. The board may grant temporary licenses when the wholesale drug distributor, pharmacy distributor, drug outsourcer, or third-party logistics provider first applies for a license to operate within the state. Temporary licenses shall remain valid until such time as the board shall find that the applicant meets or fails to meet the requirements for regular licensure. No license shall be issued or renewed for a wholesale drug distributor, pharmacy distributor, drug outsourcer, or third-party logistics provider to operate unless the same shall be operated in a manner prescribed by law and according to the rules and regulations promulgated by the board of pharmacy with respect thereto. Separate licenses shall be required for each distribution site owned or operated by a wholesale drug distributor, pharmacy distributor, drug outsourcer, or third-party logistics provider, unless such drug distributor, pharmacy distributor, drug outsourcer, or third-party logistics provider meets the requirements of section 338.335.

2. An agent or employee of any licensed or registered wholesale drug distributor, pharmacy distributor, drug outsourcer, or third-party logistics provider need not seek licensure under this section and may lawfully possess pharmaceutical drugs, if the agent or employee is acting in the usual course of his or her business or employment.

3. The board may permit out-of-state wholesale drug distributors, drug outsourcers, third-party logistics

[provider**]** providers, or out-of-state pharmacy distributors to be licensed as required by sections 338.210 to 338.370 on the basis of reciprocity to the extent that the entity both:

(1) Possesses a valid license granted by another state pursuant to legal standards comparable to those which must be met by a wholesale drug distributor, pharmacy distributor, drug **[**outsourcers**]** outsourcer, or third-party logistics provider of this state as prerequisites for obtaining a license under the laws of this state. If a state license is not issued by their resident state, out-of-state wholesale drug distributors and third-party logistics providers with a current and valid drug distributor accreditation from the National Association of Boards of Pharmacy or its successor may be eligible for licensure as provided by the board by rule; and

(2) Distributes into Missouri from a state which would extend reciprocal treatment under its own laws to a wholesale drug distributor, pharmacy distributor, drug outsourcers, or third-party logistics provider of this state.

338.600. 1. As used in this section, the following terms shall mean:

(1) "Audit", any review, inspection, investigation, examination, or analysis conducted by a pharmacy benefits manager (PBM) or its representative of a pharmacy's records, claims, practices, or compliance with contractual obligations or legal requirements, which may result in recoupment, repayment demand, chargeback, penalty, or other financial adjustment. Routine verification or inquiry regarding claim elements or documentation shall not constitute an audit; however, no recoupment, repayment demand, chargeback, penalty, or financial adjustment shall be based upon or initiated through such inquiry unless the

inquiry is converted to an audit and conducted in compliance with the requirements of this section;

(2) "Entity", a managed care company, insurance company or third-party payor, or representative of a managed care company, insurance company or third-party payor, or a pharmacy benefits manager or a subcontractor of a pharmacy benefits manager.

2. 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**]** fourteen days prior to conducting the initial on-site audit for each audit cycle and shall specify specific prescriptions to be audited which may or may not include the final two digits of the prescription numbers. The notice required under this subsection shall be in writing and shall be sent by means that allows tracking of delivery to the pharmacist or pharmacy not later than the fourteenth day before the date on which the on-site audit is scheduled to occur. A pharmacy benefit manager is not required to provide notice before conducting an audit if, after reviewing claims data, written or oral statements of pharmacy staff, wholesalers, or other investigative information, including patient referrals, the plan issuer or pharmacy benefit manager suspects the pharmacist or pharmacy subject to the audit committed fraud or made an intentional misrepresentation related to the pharmacy business, which cause and suspicion shall be disclosed to pharmacy upon initiation of the audit;

(2) Any audit which involves clinical judgment shall be conducted by or in consultation with a **[**licensed**]** pharmacist licensed by the Missouri board of pharmacy, and said pharmacist shall be made available to the audited pharmacy to discuss clinical rationale and Missouri legal requirements;

(3) Any clerical error, record-keeping 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. The pharmacy shall have the right to submit amended claims within thirty days of the discovery of an error to correct clerical or record keeping errors in lieu of recoupment if the prescription was dispensed according to requirements set forth in state or federal law;

(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) An audit shall be limited to forty unique prescriptions, with a maximum of two hundred separately adjudicated claims, that have been randomly selected, and such randomness shall be reflected by auditing a similar type of prescriptions as are collectively adjudicated.

(a) If an audit reveals the necessity for a review of additional claims, the audit shall be conducted on site.

(b) An entity shall not initiate an audit of a pharmacy more than two times in a calendar year, unless fraud is suspected as described in subdivision (1) of this subsection; such audit of pharmacy records includes any prescription information request by an auditing entity that could result in recoupment.

(c) The list of the claims subject to an on-site audit shall be provided in the notice under paragraph (a) of this subdivision to the pharmacist or pharmacy and shall identify the claims only by the prescription numbers or a date range

for prescriptions subject to the audit. The last two digits of the prescription numbers provided may be omitted;

(9) A recoupment shall not be based on a requirement that a pharmacy or pharmacist perform a professional duty in addition to or exceeding professional duties prescribed by the Missouri board of pharmacy;

(10) Recoupment shall only occur following the correction of a claim and shall be limited to amounts adjudicated by a pharmacy benefits manager;

(11) Except for MO HealthNet claims, approval of drug, prescriber, or patient eligibility upon adjudication of a claim shall not be reversed unless the pharmacy or pharmacist obtained the adjudication by fraud, abuse, waste, a misrepresentation of claim elements, or claims that were not properly rendered or billed by a pharmacy or pharmacist, or otherwise in accordance with state pharmacy audit laws.

(a) This subdivision does not preclude a pharmacy benefits manager from engaging in claims reconciliation activities if the activities do not result in a retroactive reduction or recoupment of payment to the pharmacist or pharmacy for a previously adjudicated covered claim:

(b) A pharmacy benefits manager may not charge a pharmacy or pharmacist a fee relating to the adjudication of a claim;

(12) Any entity conducting an audit shall not be compensated, nor shall any of its employees be compensated, directly or indirectly, based on any amounts recouped;

(13) An entity shall not charge a fee for conducting an on-site or a desk audit unless there is a finding of actual fraud;

(14) 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] the date the claim was submitted for payment [if] unless there has been a previous finding of fraud or as otherwise provided by state or federal law;

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

[(10)] (16) The preliminary audit report shall be delivered to the pharmacy within one hundred twenty days [after conclusion of the audit] from the date the pharmacy submits the audit information to the pharmacy benefits manager, 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. Audit reports not delivered to the pharmacy in this timeline shall be deemed to have no discrepancies and no recoupment shall be made;

[(11)] (17) 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;

(18) The days' supply for unit-of-use items, such as topicals, drops, vials, and inhalants, shall not be limited beyond manufacturer recommendations;

(19) If the only commercially available package size exceeds an entity's maximum days' supply, the dispensing of such package size shall be accepted by the entity and shall not be the basis for recoupment;

(20) If the only commercially available package size exceeds an entity's maximum days' supply and the entity

accepts the refill of such prescription, the entity shall not recoup such claim as an early refill;

(21) The failure of a pharmacy to collect a copayment shall not be the basis for recoupment if the pharmacy provides documentation of billing of the claim and a reasonable attempt to collect the copayment; and

(22) In a wholesale invoice audit conducted by an entity:

(a) An entity shall not audit the claims of another entity;

(b) The following shall not form the basis for recoupment:

a. The national drug code for the dispensed drug is in a quantity that is a sub-unit or multiple of the purchased drug as reflected on a supporting wholesale invoice;

b. The correct quantity dispensed is reflected on the audited pharmacy claim; or

c. The drug dispensed by the pharmacy on an audited pharmacy claim is identical to the strength and dosage form of the drug purchased;

(c) The entity shall accept as evidence:

a. Supplier invoices issued prior to the date of dispensing the drug underlying the audited claim;

b. Invoices from any supplier authorized by law to transfer ownership of the drug acquired by the audited pharmacy;

c. Copies of supplier invoices in the possession of the audited pharmacy; and

d. Reports required by any state board or agency; and

(d) Within five business days of a request by the audited pharmacy, the entity shall provide supporting documentation provided to the entity by the audited pharmacy's suppliers.

[2.**]** 3. 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.**]** 4. 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.**]** 5. Each entity conducting an audit shall provide a copy of the final audit report, after completion of any appeal process, to the plan sponsor. Such report shall include the total amount of recoupment returned to the plan sponsor, if any.

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

[6.**]** 7. 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.

376.387. 1. For purposes of **[**this section**]** sections 376.387 to 376.399, the following terms shall mean:

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

(2) "Covered person", the same meaning as such term is defined in section 376.1257;

[(2)**]** (3) "Health benefit plan", the same meaning as such term is defined in section 376.1350;

[(3)**]** (4) "Health carrier" **[**or "carrier", the same meaning as such term is defined in section 376.1350**]**, 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;

[(4)**]** (5) "Pharmacy", the same meaning as such term is defined in chapter 338;

[(5)**]** (6) "Pharmacy benefits manager", **[**the same meaning as such term is defined in section 376.388**]** an entity that contracts with pharmacies on behalf of health carriers or health benefit plans to provide prescription drug and pharmacist services;

(7) "Pharmacy benefits manager affiliate", a pharmacy or pharmacist that directly or indirectly, through one or more intermediaries, owns or controls, is owned or controlled by, or is under common ownership or control with a pharmacy benefits manager;

(8) "Plan sponsor", the sponsor of the health benefit plans.

2. No pharmacy benefits manager, or prescription claims processor of any kind, shall include a provision in a contract entered into or modified on or after August 28, 2018, with a pharmacy or pharmacist that requires a covered person to make a payment for a prescription drug at the point of sale in an amount that exceeds the lesser of:

(1) The copayment amount as required under the health benefit plan; or

(2) The amount an individual would pay for a prescription if that individual paid with cash; or

(3) The contracted rate the pharmacy would be reimbursed for the drug.

3. A pharmacy or pharmacist shall have the right to provide to a covered person information regarding the amount of the covered person's cost share for a prescription drug, the covered person's cost of an alternative drug, and the covered person's cost of the drug without adjudicating the claim through the pharmacy benefits manager. Neither a pharmacy nor a pharmacist shall be proscribed by a pharmacy benefits manager from discussing any such information or from selling a more affordable alternative to the covered person.

4. No pharmacy benefits manager shall, directly or indirectly, charge or hold a pharmacist or pharmacy responsible for any fee amount related to a claim that is not known at the time of the claim's adjudication, unless the amount is a result of improperly paid claims or charges for administering a health benefit plan.

5. This section shall not apply with respect to claims under Medicare Part D, or any other plan administered or regulated solely under federal law, and to the extent this section may be preempted under the Employee Retirement

Income Security Act of 1974 for self-funded employer-sponsored health benefit plans.

6. A pharmacy benefits manager shall notify in writing any health carrier with which it contracts if the pharmacy benefits manager has a conflict of interest, any commonality of ownership, or any other relationship, financial or otherwise, between the pharmacy benefits manager and any other health carrier with which the pharmacy benefits manager contracts.

7. **[**The department of commerce and insurance shall enforce this section**]** The pharmacy benefits manager or plan sponsor shall provide the plan sponsor documentation of any benefit design that encourages or requires enrollees to fill prescriptions at affiliated pharmacies.

8. A pharmacy benefits manager shall exercise good faith and fair dealing in the administration of pharmacy benefits and shall ensure that any conflicts of interest that may clinically or financially impact covered persons or the health benefit plan sponsor in a negative manner are disclosed.

9. All disclosures required under this section shall be provided to the plan sponsor or its authorized agent in a universal manner.

10. If a pharmacy benefits manager or health carrier has an affiliated pharmacy or a pharmacy under common ownership, the pharmacy benefits manager shall disclose to the plan sponsor:

(1) The amount charged per dosage unit to the affiliated pharmacy; and

(2) The median amount charged per dosage unit at nonaffiliated, in-network pharmacies.

11. The department of commerce and insurance shall enforce this section and may audit a pharmacy benefits manager to ensure compliance with this section.

376.399. 1. Health carriers shall comply with H.R. 7148, the Consolidated Appropriations Act, by September 1, 2028.

2. The department of commerce and insurance shall enforce this section.

3. Nothing in this section or sections 338.600 and 376.387, shall apply with respect to claims under Medicare Part D, or any other plan administered or regulated solely under federal law, and to the extent these sections may be preempted under the Employee Retirement Income Security Act of 1974 for self-funded employer-sponsored health benefit plans.

4. The director may promulgate rules to effectuate 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, 2026, shall be invalid and void.