

SENATE BILL NO. 968

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR FITZWATER.

5510S.011

KRISTINA MARTIN, Secretary

AN ACT

To repeal sections 338.015 and 376.388, RSMo, and to enact in lieu thereof two new sections relating to pharmacy benefit managers.

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

Section A. Sections 338.015 and 376.388, RSMo, are
2 repealed and two new sections enacted in lieu thereof, to be
3 known as sections 338.015 and 376.388, to read as follows:

338.015. 1. The provisions of sections 338.010 to
2 338.015 shall not be construed to inhibit the patient's
3 freedom of choice to obtain prescription services from any
4 licensed pharmacist. However, nothing in sections 338.010
5 to 338.315 abrogates the patient's ability to waive freedom
6 of choice under any contract with regard to payment or
7 coverage of prescription expense.

8 2. All pharmacists may provide pharmaceutical
9 consultation and advice to persons concerning the safe and
10 therapeutic use of their prescription drugs.

11 3. All patients shall have the right to receive a
12 written prescription from their prescriber to take to the
13 facility of their choice or to have an electronic
14 prescription transmitted to the facility of their choice.

15 4. **Notwithstanding any other provision of law to the**
16 **contrary, no pharmacy benefits manager shall:**

EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

17 (1) Prohibit or limit a covered person from selecting
18 a pharmacy or pharmacist of their choice or impose a
19 monetary advantage or penalty that would affect a covered
20 person's choice if a pharmacy or pharmacist has agreed to
21 participate in a covered person's health benefit plan. A
22 monetary advantage or penalty includes, but is not limited
23 to, a copayment or coinsurance variation, a reduction in
24 reimbursement for services, a promotion of one participating
25 pharmacy over another, or comparing the reimbursement rates
26 of a pharmacy against mail order pharmacy reimbursement
27 rates;

28 (2) Impose upon a pharmacy or pharmacist any course of
29 study, accreditation, certification, or credentialing as a
30 condition of participation that is inconsistent with, more
31 stringent than, or in addition to any state law or rules
32 promulgated by the board of pharmacy for the purpose of
33 licensure or certification;

34 (3) Pay or reimburse a pharmacy or pharmacist in this
35 state for an amount less than the most recently published
36 National Average Drug Acquisition Cost for a prescription
37 drug on the date that the prescription drug is administered
38 or dispensed.

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

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

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

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

19 (3) "Maximum allowable cost", [the per-unit amount
20 that a pharmacy benefits manager reimburses a pharmacist for
21 a prescription drug, excluding a dispensing or professional
22 fee] **the maximum amount that a pharmacy benefits manager
23 shall reimburse a pharmacy for the cost of a multisourced
24 drug, medical product, or a device, not including the
25 dispensing fee for the drug;**

26 (4) "Maximum allowable cost list" or "MAC list", [a
27 listing of drug products that meet the standard described in
28 this section] **the multisource generic drugs, medical
29 products, and devices for which a maximum allowable cost has
30 been established by a pharmacy benefits manager or a
31 purchaser;**

32 (5) "National Average Drug Acquisition Cost" or
33 "NADAC", the monthly survey of retail pharmacies conducted
34 by the federal Centers for Medicare and Medicaid Services to
35 determine the average acquisition cost for drugs;

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

37 [(6)] (7) "Pharmacy benefits manager", [an entity that
38 contracts with pharmacies on behalf of health carriers or
39 any health plan sponsored by the state or a political
40 subdivision of the state] **a person, business, or entity,
41 including a wholly or partially owned or controlled
42 subsidiary of a pharmacy benefits manager, that provides**

claims processing services or other drug or device services, or both, for health benefit plans or health carriers. A "pharmacy benefits manager" shall not include:

(a) A health care professional licensed to practice in this state;

(b) A health care facility licensed in this state;

(c) A consultant who only provides advice as to the selection or performance of a pharmacy benefits manager; or

(d) An entity that provides claims processing services or other drug or device services, or both, exclusively for its enrollees;

(8) "Pharmacy benefits manager affiliate":

(a) A pharmacy or pharmacist that directly or indirectly, through one or more intermediaries, owns or controls a pharmacy with a pharmacy benefits manager; or

(b) A pharmacy that directly or indirectly, through one or more intermediaries, is owned or under common ownership or control of a pharmacy benefits manager.

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

74 and requirements of this section, in order to remain
75 consistent with pricing changes in the marketplace.

76 3. A pharmacy benefits manager shall reimburse
77 pharmacies for drugs subject to maximum allowable cost
78 pricing that has been updated to reflect market pricing at
79 least every seven days as set forth under subdivision (1) of
80 subsection 2 of this section. **For each claim, the**
81 **reimbursement shall be the greater of the maximum allowable**
82 **cost pricing or the current NADAC pricing.**

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

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

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

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

No pharmacy benefits manager shall retaliate against a contracted pharmacy for exercising its right to appeal to the 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 under 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 under subsection 4 of this section; **or**

(3) The drug subject to maximum allowable cost pricing was reimbursed at a rate lower than the NADAC.

9. A pharmacy benefits manager shall reimburse any pharmacist or pharmacy located in this state for an amount

136 equal to what the pharmacy benefits manager reimburses a
137 pharmacy benefits manager affiliate for dispensing the same
138 prescription drug.

139 10. In addition to the reimbursements determined by
140 maximum allowable cost and the NADAC, a pharmacy benefits
141 manager shall reimburse the pharmacy or pharmacist a
142 dispensing fee in an amount no less than ninety percent of
143 the MO HealthNet professional dispensing fee in effect on
144 the date of service.

✓