

SECOND REGULAR SESSION
[P E R F E C T E D]
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILLS NOS. 865 & 866

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SATER.

Offered February 24, 2016.

Senate Substitute adopted, February 24, 2016.

Taken up for Perfection February 24, 2016. Bill declared Perfected and Ordered Printed, as amended.

ADRIANE D. CROUSE, Secretary.

5458S.03P

AN ACT

To repeal sections 338.270, 338.347, and 354.535, RSMo, and to enact in lieu thereof seven new sections relating to pharmacy.

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

Section A. Sections 338.270, 338.347, and 354.535, RSMo, are repealed
2 and seven new sections enacted in lieu thereof, to be known as sections 338.075,
3 338.270, 338.347, 354.535, 376.379, 376.387, and 376.388, to read as follows:

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

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

13 **(2) Any surrender of a license or authorization to practice or
14 operate as a pharmacist, intern pharmacist, pharmacy technician,**

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

15 **pharmacy, drug distributor, drug manufacturer, or drug outsourcing**
16 **facility while under disciplinary investigation by another licensing**
17 **state, jurisdiction, or governmental agency, and;**

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

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

23 **3. The board shall promulgate rules to implement the provisions**
24 **of this section. Any rule or portion of a rule, as that term is defined in**
25 **section 536.010 that is created under the authority delegated in this**
26 **section shall become effective only if it complies with and is subject to**
27 **all of the provisions of chapter 536, and, if applicable, section**
28 **536.028. This section and chapter 536 are nonseverable and if any of**
29 **the powers vested with the general assembly pursuant to chapter 536,**
30 **to review, to delay the effective date, or to disapprove and annul a rule**
31 **are subsequently held unconstitutional, then the grant of rulemaking**
32 **authority and any rule proposed or adopted after August 28, 2016, shall**
33 **be invalid and void.**

338.270. 1. Application blanks for renewal permits shall be mailed to
2 each permittee on or before the first day of the month in which the permit expires
3 and, if application for renewal of permit is not made before the first day of the
4 following month, the existing permit, or renewal thereof, shall lapse and become
5 null and void upon the last day of that month.

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

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

6 **2. The board shall not renew an out-of-state wholesale drug**
7 **distributor, out-of-state pharmacy distributor, or drug distributor**
8 **license or registration if the renewal applicant does not hold a current**
9 **distributor license or its equivalent in the state or jurisdiction in which**
10 **the distribution facility is located, or, if a drug distributor registrant,**

11 **the entity is not authorized and in good standing to operate as a drug**
12 **manufacturer with the Food and Drug Administration or within the**
13 **state or jurisdiction where the facility is located.**

354.535. 1. If a pharmacy, operated by or contracted with by a health
2 maintenance organization, is closed or is unable to provide health care services
3 to an enrollee in an emergency, a pharmacist may take an assignment of such
4 enrollee's right to reimbursement, if the policy or contract provides for such
5 reimbursement, for those goods or services provided to an enrollee of a health
6 maintenance organization. No health maintenance organization shall refuse to
7 pay the pharmacist any payment due the enrollee under the terms of the policy
8 or contract.

9 2. No health maintenance organization, conducting business in the state
10 of Missouri, shall contract with a pharmacy, pharmacy distributor or wholesale
11 drug distributor, nonresident or otherwise, unless such pharmacy or distributor
12 has been granted a permit or license from the Missouri board of pharmacy to
13 operate in this state.

14 3. Every health maintenance organization shall apply the same
15 coinsurance, co-payment and deductible factors to all drug prescriptions filled by
16 a pharmacy provider who participates in the health maintenance organization's
17 network if the provider meets the contract's explicit product cost determination.
18 If any such contract is rejected by any pharmacy provider, the health
19 maintenance organization may offer other contracts necessary to comply with any
20 network adequacy provisions of this act. However, nothing in this section shall
21 be construed to prohibit the health maintenance organization from applying
22 different coinsurance, co-payment and deductible factors between generic and
23 brand name drugs.

24 **4. If the co-payment applied by a health maintenance**
25 **organization exceeds the usual and customary retail price of the**
26 **prescription drug, enrollees shall only be required to pay the usual and**
27 **customary retail price of the prescription drug, and no further charge**
28 **to the enrollee or plan sponsor shall be incurred on such prescription.**

29 5. Health maintenance organizations shall not set a limit on the quantity
30 of drugs which an enrollee may obtain at any one time with a prescription, unless
31 such limit is applied uniformly to all pharmacy providers in the health
32 maintenance organization's network.

33 [5.] 6. Health maintenance organizations shall not insist or mandate any

34 physician or other licensed health care practitioner to change an enrollee's
35 maintenance drug unless the provider and enrollee agree to such change. For the
36 purposes of this provision, a maintenance drug shall mean a drug prescribed by
37 a practitioner who is licensed to prescribe drugs, used to treat a medical condition
38 for a period greater than thirty days. Violations of this provision shall be subject
39 to the penalties provided in section 354.444. Notwithstanding other provisions
40 of law to the contrary, health maintenance organizations that change an
41 enrollee's maintenance drug without the consent of the provider and enrollee
42 shall be liable for any damages resulting from such change. Nothing in this
43 subsection, however, shall apply to the dispensing of generically equivalent
44 products for prescribed brand name maintenance drugs as set forth in section
45 338.056.

**376.379. 1. A health carrier or managed care plan offering a
2 health benefit plan in this state that provides prescription drug
3 coverage shall offer, as part of the plan, medication synchronization
4 services developed by the health carrier or managed care plan that
5 allow for the alignment of refill dates for an enrollee's prescription
6 drugs that are covered benefits.**

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

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

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

16 (b) A participating provider dispenses the prescription drug;

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

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

**376.387. If the co-payment for prescription drugs applied by a
2 health insurer or health carrier, as defined in section 376.1350, exceeds
3 the usual and customary retail price of the prescription drug, enrollees
4 shall only be required to pay the usual and customary retail price of**

5 the prescription drug, and no further charge to the enrollee or plan
6 sponsor shall be incurred on such prescription.

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

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

6 (2) "Health carrier", an entity subject to the insurance laws and
7 regulations of this state that contracts or offers to contract to provide,
8 deliver, arrange for, pay for, or reimburse any of the costs of health
9 care services, including a sickness and accident insurance company, a
10 health maintenance organization, a nonprofit hospital and health
11 service corporation, or any other entity providing a plan of health
12 insurance, health benefits, or health services, except that such plan
13 shall not include any coverage pursuant to a liability insurance policy,
14 workers' compensation insurance policy, or medical payments
15 insurance issued as a supplement to a liability policy;

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

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

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

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

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

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

33 (2) Maintain a procedure to eliminate products from the
34 maximum allowable cost list of drugs subject to such pricing or modify
35 maximum allowable cost pricing at least every seven days if such drugs

36 do not meet the standards and requirements of this section in order to
37 remain consistent with pricing changes in the marketplace.

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

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

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

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

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

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

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

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

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

72 (3) Allow the pharmacy that succeeded in the appeal to reverse

73 **and rebill the pharmacy benefits claim giving rise to the appeal.**

74 **8. Appeals shall be upheld if:**

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

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

Unofficial ✓

Bill

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