

SECOND REGULAR SESSION

HOUSE BILL NO. 2221

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES NAEGER, HENDRICKSON, HENDERSON (Co-sponsors),
SANDERS BROOKS AND CAMPBELL.

Read 1st time March 15, 2002, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

4009L.011

AN ACT

To amend chapter 338, RSMo, by adding thereto thirteen new sections relating to the pharmacy benefit management regulation.

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

Section A. Chapter 338, RSMo, is amended by adding thereto thirteen new sections, to
2 be known as sections 338.400, 338.403, 338.406, 338.409, 338.412, 338.415, 338.418, 338.421,
3 338.424, 338.427, 338.430, 338.433 and 338.436, to read as follows:

**338.400. Sections 338.400 to 338.436 shall be known and cited as the "Pharmacy
2 Benefit Management Regulation Act".**

338.403. For purposes of sections 338.400 to 338.436, the following terms mean:

2 (1) "Board of pharmacy" or "board", the state board of pharmacy empowered to
3 regulate pharmacy benefit management companies and pharmacy benefit managers
4 including granting a certificate of authority to a company;

5 (2) "Cease and desist", an order of the board prohibiting a pharmacy benefit
6 manager or pharmacy benefit management company, or other person or entity from
7 continuing a particular course of conduct that violates sections 338.400 to 338.436 or the
8 rules promulgated thereunder;

9 (3) "Director", the director of the department of insurance;

10 (4) "Enrollee", an individual who has been enrolled in a pharmacy benefit
11 management plan;

12 (5) "Insolvent" or "insolvency", a financial situation in which, based upon the
13 financial information required by sections 338.400 to 338.436 for the preparation of the
14 pharmacy benefit management company's annual statement, the assets of the pharmacy
15 benefit management company are less than the sum of all of its liabilities and required

16 reserves;

17 (6) "Pharmacists services", includes drug therapy and other patient care services
18 provided by a licensed pharmacist intended to achieve outcomes related to the cure or
19 prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or
20 slowing of a disease process as defined in the rules of the board;

21 (7) "Pharmacist", any individual properly licensed as a pharmacist by the state
22 pharmacy board;

23 (8) "Pharmacy", any appropriately licensed place within this state where drugs
24 are dispensed and pharmacists services are provided;

25 (9) "Pharmacy benefit management company", a business that administers the
26 prescription drug or device portion of health insurance plans on behalf of plan sponsors,
27 such as self-insured employers, insurance companies, unions, and health maintenance
28 organizations;

29 (10) "Pharmacy benefit management plan", an arrangement for the delivery of
30 prescription services in which a pharmacy benefit management company undertakes to
31 provide, arrange for, pay for, or reimburse any of the costs of prescription services for an
32 enrollee on a prepaid or insured basis which:

33 (a) Contains one or more incentive arrangements intended to influence the cost or
34 level of prescription services between the plan sponsor and one or more pharmacies with
35 respect to the delivery of prescription services; and

36 (b) Requires or creates benefit payment differential incentives for enrollees to use
37 under contract with the pharmacy benefit management company.

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39 A pharmacy benefit plan does not include an employee welfare benefit plan, as defined in
40 the Employee Retirement Income Security Act of 1974, 29 U.S.C. Section 1002(1), which
41 is self-insured or self-funded.

338.406. 1. No person or organization shall establish or operate a pharmacy benefit
2 management company in this state to provide pharmacy benefit management plans without
3 obtaining a certificate of authority from the state board of pharmacy. All pharmacy
4 benefit management companies providing pharmacy benefit management plans in this
5 state shall obtain a certificate of authority from the state board of pharmacy every four
6 years.

7 2. Any organization or person may apply to the board to obtain a certificate of
8 authority to establish and operate a pharmacy benefit management company in compliance
9 with sections 338.400 to 338.436; provided that such organization or person obtains from
10 the director an annual license to do business in this state.

11 **3. The board may suspend or revoke any certificate of authority issued to a**
12 **pharmacy benefit management company pursuant to sections 338.400 to 338.436 or deny**
13 **an application for a certificate of authority if the board finds that:**

14 **(1) The pharmacy benefit management company is operating significantly in**
15 **contravention of the company's basic organizational document;**

16 **(2) The pharmacy benefit management company does not arrange for pharmacists**
17 **services;**

18 **(3) The pharmacy benefit management company has failed to meet the**
19 **requirements for issuance of a certificate of authority as set forth in sections 338.400 to**
20 **338.436;**

21 **(4) The pharmacy benefit management company is unable to fulfill its obligation**
22 **to furnish pharmacists services as required under the company's pharmacy benefit**
23 **management plan;**

24 **(5) The pharmacy benefit management company is no longer financially**
25 **responsible and may reasonably be expected to be unable to meet the company's**
26 **obligations to enrollees or prospective enrollees;**

27 **(6) The pharmacy benefit management company, or any person on its behalf, has**
28 **advertised or merchandised the company's services in an untrue, misrepresentative,**
29 **misleading, deceptive, or unfair manner;**

30 **(7) The continued operation of the pharmacy benefit management company would**
31 **be hazardous to the company's enrollees;**

32 **(8) The pharmacy benefit management company has failed to file an annual**
33 **statement with the director in a timely manner; or**

34 **(9) The pharmacy benefit management company has otherwise failed to**
35 **substantially comply with sections 338.400 to 338.436.**

36 **4. When a certificate of authority of a pharmacy benefit management company is**
37 **revoked, such company shall proceed, immediately following the effective date of the order**
38 **of revocation, to wind up its affairs and shall not conduct further business except as may**
39 **be essential to the orderly conclusion of the affairs of such company. The board may**
40 **permit such further operation of the company as the board may find to be in the best**
41 **interest of enrollees and to afford the enrollees the greatest practical opportunity to obtain**
42 **pharmacists services.**

338.409. 1. The director shall not issue an annual license to do business in this state
2 **to any pharmacy benefit management company providing pharmacy benefit management**
3 **plans until the director is satisfied that the pharmacy benefit management company:**

4 **(1) Pays all fees, taxes, and charges required by law;**

- 5 (2) Makes any deposit required by sections 338.400 to 338.436;
- 6 (3) Has the minimum capital and surplus requirements specified by the director;
- 7 (4) Files a financial statement or statements and any reports, certificates, or other
- 8 documents the director considers necessary to secure a full and accurate knowledge of its
- 9 affairs and financial condition;
- 10 (5) Is solvent and the company's financial condition, method of operation, and
- 11 manner of doing business are such as to satisfy the director that the company can meet its
- 12 obligations to all enrollees; and
- 13 (6) Has otherwise complied with all the requirements of law.

14 2. The license shall be in addition to the certificate of authority required by the

15 board. A nonrefundable license application fee of five hundred dollars shall accompany

16 each application for a license to transact business in this state. The fee shall be collected

17 by the director and paid directly into a special fund that shall provide expenses for the

18 regulation, supervision, and examination of all entities subject to regulation pursuant to

19 sections 338.400 to 338.436. The license shall be signed by the director or an authorized

20 agent of the director and shall expire on the next June thirtieth after the date on which the

21 license becomes effective.

22 3. All pharmacy benefit management companies providing pharmacy benefit

23 management plans shall obtain an annual renewal of the company's license from the

24 director. The director may refuse to renew the license of any pharmacy benefit

25 management company or may renew the license, subject to any restrictions considered

26 appropriate by the director, if the director finds an impairment of required capital and

27 surplus or if the director finds that the pharmacy benefit management company has not

28 satisfied all the conditions set forth in sections 338.400 to 338.436. The director shall not

29 fail to renew the license of any pharmacy benefit management company to transact

30 business in this state without giving the pharmacy benefit management company ten days'

31 notice and an opportunity to be heard. The hearing may be informal, and the director and

32 the pharmacy benefit management company may waive the required notice.

338.412. 1. Each pharmacy benefit management company providing pharmacy

2 management benefit plans in this state shall file a statement with the director by March

3 first of each year. The statement shall be verified by at least two principal officers and

4 shall cover the preceding calendar year. Each pharmacy benefit management company

5 shall also send a copy of the statement to the board.

- 6 2. The statement shall be on forms prescribed by the director and shall include:
- 7 (1) A financial statement of the company, including its balance sheet and income
- 8 statement for the preceding year;

9 (2) The number of persons enrolled during the year, the number of enrollees as of
10 the end of the year, and the number of enrollments terminated during the year; and

11 (3) Any other information relating to the operations of the pharmacy benefit
12 management company required by the director pursuant to sections 338.400 to 338.436.

13 3. If the pharmacy benefit management company is audited annually by an
14 independent certified public accountant, a copy of the certified audit report shall be filed
15 annually with the director by June thirtieth.

16 4. The director may extend the time prescribed for any pharmacy benefit
17 management company for filing annual statements or other reports or exhibits for good
18 cause shown; except that, the director shall not extend the time for filing annual statements
19 beyond sixty days after the time prescribed in subsection 1 of this section. Any pharmacy
20 benefit management company that fails to file its annual statement within the time
21 prescribed in this section may have its license revoked by the director or the company's
22 certificate of authority revoked or suspended by the board until the annual statement is
23 filed.

 338.415. 1. In lieu of or in addition to the director making a financial examination
2 of a pharmacy benefit management company, the director may accept the report of a
3 financial examination of any other person responsible for the pharmacy benefit
4 management companies pursuant to the laws of another state certified by the insurance
5 supervisory official, similar regulatory agency, or the state health commissioner of another
6 state.

7 2. The director shall coordinate financial examinations of a pharmacy benefit
8 management company that provides pharmacy management benefit plans in this state to
9 ensure an appropriate level of regulatory oversight and to avoid any undue duplication of
10 effort or regulation. The pharmacy benefit management company being examined shall
11 pay the cost of the examination. The cost of the examination shall be deposited in a special
12 fund that shall provide all expenses for the regulation, supervision, and examination of all
13 entities subject to regulation pursuant to sections 338.400 to 338.436.

 338.418. 1. The expense of administering sections 338.400 to 338.436, including the
2 cost incurred by the director and the board, shall be assessed annually by the board
3 against all pharmacy benefit management companies operating in this state. Before
4 determining the assessment, the board shall request from the director an estimate of all
5 expenses for the regulation, supervision, and examination of all entities subject to
6 regulation pursuant to sections 338.400 to 338.436. The assessment shall be in proportion
7 to the business done in this state.

8 2. All fees assessed pursuant to sections 338.400 to 338.436 and paid to the board

9 shall be deposited in a special fund that shall provide all expenses for the regulation,
10 supervision, and examination of all entities subject to regulation pursuant to sections
11 338.400 to 338.436.

12 3. The board shall assess each pharmacy benefit management company annually
13 for the company's just share of expenses. The assessment shall be in proportion to the
14 business done in this state. The board shall provide the director an amount from the
15 special fund to cover all expenses incurred by the director for the regulation pursuant to
16 sections 338.400 to 338.436.

17 4. The board shall give each pharmacy benefit management company notice of the
18 assessment which shall be paid to the board on or before March first of each year. Any
19 pharmacy benefit management company that fails to pay the assessment on or before
20 March first of each year shall be subject to a penalty imposed by the board. The penalty
21 shall be equal to ten percent of the assessment plus interest for the period between the due
22 date and the date of full payment. If a payment is made in an amount later found to be in
23 error, the director shall:

24 (1) If an additional amount is due, notify the company of the additional amount and
25 the company shall pay the additional amount within fourteen days of the date of the notice;
26 or

27 (2) If an overpayment is made, order a refund.

28
29 If an assessment made pursuant to sections 338.400 to 338.436 is not paid to the board by
30 the prescribed date, the amount of the assessment, penalty, and interest may be recovered
31 from the defaulting company on a motion of the board made in the name and for the use
32 of the state in the appropriate circuit court after ten days' notice to the company. The
33 certificate of authority of any defaulting company to transact business in this state may be
34 revoked or suspended by the board until it has paid such assessment.

338.421. Any pharmacy benefit management company that contracts with a
2 pharmacy or pharmacist to provide pharmacists services through a pharmacy management
3 plan for enrollees in this state shall file such contract with the board thirty days before the
4 execution of such contract. The contract shall be deemed approved unless the board
5 disapproves such contract within thirty days after filing with the board. Disapproval shall
6 be in writing, stating the reasons for disapproval and a copy of the disapproval shall be
7 delivered to the pharmacy benefit management company. The board, consistent with its
8 responsibility for protecting the public interest, shall develop formal criteria for the
9 approval and disapproval of pharmacy benefit management company contracts.

338.424. 1. The board shall develop formal investigation and compliance

2 procedures with respect to complaints by plan sponsors, pharmacists, or enrollees
3 concerning the failure of a pharmacy benefit management company or a pharmacy benefit
4 manager to comply with the provisions of sections 338.400 to 338.436. If the board has
5 reason to believe that a violation of sections 338.400 to 338.436 has occurred, the board
6 shall issue and serve upon the pharmacy benefit management company or the pharmacy
7 benefit manager a statement of the charges and a notice of a hearing to be held at a time
8 and place fixed in the notice, which shall not be less than thirty days after notice is served.
9 The notice shall require the pharmacy benefit management company or the pharmacy
10 benefit manager to show cause why an order should not be issued directing the alleged
11 offender to cease and desist from the violation. At such hearing, the pharmacy benefit
12 management company or the pharmacy benefit manager shall have an opportunity to be
13 heard and to show cause why an order should not be issued requiring the pharmacy benefit
14 management company or the pharmacy benefit manager to cease and desist from the
15 violation.

16 2. The board may make an examination concerning the quality of services of any
17 pharmacy benefit management company and providers with whom the pharmacy benefit
18 management company has contracts, agreements, or other arrangements pursuant to its
19 pharmacy benefit management plan as often as the board deems necessary for the
20 protection of the interests of the citizens of this state. The pharmacy benefit management
21 company being examined shall pay the cost of the examination.

338.427. 1. No pharmacy benefit management company or its representative shall
2 cause or knowingly permit the use of:

- 3 (1) Advertising that is untrue or misleading;
- 4 (2) Solicitation that is untrue or misleading; or
- 5 (3) Any form of evidence of coverage that is deceptive.

6 2. No pharmacy benefit management company, unless licensed as an insurer, shall
7 use in the company's name, contracts, or literature:

- 8 (1) The words "insurance", "casualty", "surety", or "mutual"; or
- 9 (2) Any other words descriptive of the insurance, casualty, or surety business or
10 deceptively similar to the name or description of any insurance or fidelity and surety
11 insurer doing business in this state.

12 3. No pharmacy benefit management company shall discriminate on the basis of
13 race, creed, color, sex, or religion in the selection of pharmacies for participation in the
14 organization.

15 4. No pharmacy benefit management company shall unreasonably discriminate
16 against pharmacists when contracting for pharmacists services.

338.430. The following shall be provided to the pharmacy benefit management company's enrollees of a pharmacy benefit management plan at the time of enrollment or at the time the contract is issued and shall be made available upon request or at least annually:

(1) A list of the names and locations of all affiliated providers;

(2) A description of the service area or areas within which the pharmacy benefit management company will provide prescription services;

(3) A description of the method of resolving complaints of covered persons, including a description of any arbitration procedure if complaints may be resolved through a specified arbitration agreement;

(4) Notice that the pharmacy benefit management company is subject to regulation in this state by both the state board of pharmacy and the director of the department of insurance; and

(5) A prominent notice included within the evidence of coverage, providing substantially the following: "If you have any questions regarding an appeal or grievance concerning the pharmacists services that you have been provided, which have not been satisfactorily addressed by your plan, you may contact the State Pharmacy Board.". Such notice shall also provide the toll-free telephone number, mailing address, and electronic mail address of the state board of pharmacy.

338.433. An enrollee in a pharmacy benefit management plan has the right to privacy and confidentiality in pharmacists services. Such right may be expressly waived in writing by the enrollee or the enrollee's guardian.

338.436. 1. If a pharmacy benefit management company becomes insolvent or ceases to be a company in this state in any assessable or license year, the company shall remain liable for the payment of the assessment for the period in which it operated as a pharmacy benefit management company in this state.

2. In the event of an insolvency of a pharmacy benefit management company, the director may, after notice and hearing, levy an assessment on pharmacy benefit management companies licensed to do business in this state. Such assessments shall be paid quarterly to the director, and upon receipt by the director shall be paid over into an escrow account in a special fund. Such escrow account shall be solely for the benefit of enrollees of the insolvent pharmacy benefit management company.