

House _____ Amendment NO. _____

Offered By

1 AMEND House Committee Substitute for Senate Substitute for Senate Committee Substitute for
2 Senate Bill No. 43, Page 2, Section 9.236, Line 7, by inserting after all of said section and line the
3 following:
4

5 "103.200. 1. For purposes of this section, the following terms mean:

6 (1) "Pharmacy", the same meaning given to the term in section 338.210;

7 (2) "Plan", the Missouri consolidated health care plan as described in section 103.005;

8 (3) "Rebate", any discount, negotiated concession, or other payment provided by a
9 pharmaceutical manufacturer, pharmacy, or health benefit plan to an entity to sell, provide, pay, or
10 reimburse a pharmacy or other entity in the state for the dispensation or administration of a
11 prescription drug on behalf of itself or another entity.

12 2. Before March 1, 2023, and annually thereafter, the pharmacy benefits manager utilized by
13 the Missouri consolidated health care plan shall file a report with the plan for the immediately
14 preceding calendar year. The report shall contain the following information regarding the plan:

15 (1) The aggregate dollar amount of all rebates that the pharmacy benefits manager collected
16 from pharmaceutical manufacturers that manufactured outpatient prescription drugs that:

17 (a) Were covered by the plan during such calendar year; and

18 (b) Were attributable to patient utilization of such drugs during such calendar year; and

19 (2) The aggregate dollar amount of all rebates, excluding any portion of the rebates received
20 by the plan, concerning drug formularies that the pharmacy benefits manager collected from
21 pharmaceutical manufacturers that manufactured outpatient prescription drugs that:

22 (a) Were covered by the plan during such calendar year; and

23 (b) Were attributable to patient utilization of such drugs by covered persons under the plan
24 during such calendar year.

25 3. In consultation with its pharmacy benefits manager, the plan shall establish a form for
26 reporting the information required under subsection 2 of this section. The form shall be designed to
27 minimize the administrative burden and cost of reporting on the plan and its pharmacy benefits
28 manager.

29 4. No documents, materials, or other information submitted to the plan under subsection 2 of
30 this section shall be subject to disclosure under chapter 610, except to the extent they are included
31 on an aggregated basis in the reports required under subsection 5 of this section. The plan shall not
32 disclose information submitted under subsection 2 of this section in a manner that:

33 (1) Is likely to compromise the financial, competitive, or proprietary nature of such
34 information; or

35 (2) Would enable a third party to identify the value of a rebate provided for a particular
36 outpatient prescription drug or therapeutic class of outpatient prescription drugs.

Action Taken _____ Date _____

1 5. (1) Before July 1, 2023, and annually thereafter, the plan shall submit a report to the
 2 standing committees of the general assembly having jurisdiction over health insurance matters. The
 3 report shall contain an aggregation of the information submitted to the plan under subdivision (1) of
 4 subsection 2 of this section for the immediately preceding calendar year and such other information
 5 as the plan in its discretion deems relevant for the purposes of this section. The plan shall provide
 6 its pharmacy benefits manager and any third party affected by submission of a report required by
 7 this subsection with a written notice describing the content of the report.

8 (2) Before July 1, 2023, and annually thereafter, the plan shall prepare a report for the
 9 immediately preceding calendar year describing the rebate practices of the plan and its pharmacy
 10 benefits manager. The plan shall provide the report to the standing committees of the general
 11 assembly having jurisdiction over health insurance matters and the director of the department of
 12 commerce and insurance. The report shall contain:

13 (a) An explanation of the manner in which the plan accounted for rebates in calculating
 14 premiums for such year;

15 (b) A statement disclosing whether, and describing the manner in which, the plan made
 16 rebates available to enrollees at the point of purchase during such year;

17 (c) A statement describing any other manner in which the plan applied rebates during such
 18 year; and

19 (d) Such other information as the plan in its discretion deems relevant for the purposes of
 20 this section.

21 6. The plan may impose a penalty of no more than seven thousand five hundred dollars on
 22 its pharmacy benefits manager for each violation of this section."; and

23
 24 Further amend said bill, Page 54, Section 338.010, Line 105, by inserting after all of said section
 25 and line the following:

26
 27 "338.015. 1. The provisions of sections 338.010 to 338.015 shall not be construed to inhibit
 28 the patient's freedom of choice to obtain prescription services from any licensed pharmacist or
 29 pharmacy. [~~However, nothing in sections 338.010 to 338.315 abrogates the patient's ability to waive~~
 30 ~~freedom of choice under any contract with regard to payment or coverage of prescription expense.]~~

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

33 3. All patients shall have the right to receive a written prescription from their prescriber to
 34 take to the facility of their choice or to have an electronic prescription transmitted to the facility of
 35 their choice.

36 4. No pharmacy benefits manager, as defined in section 376.388, shall prohibit or redirect
 37 by contract, or otherwise penalize or restrict, a covered person, as defined in section 376.387, from
 38 obtaining prescription services, consultation, or advice from a contracted pharmacy, as defined in
 39 section 376.388."; and

40
 41 Further amend said bill, Page 55, Section 338.730, Line 21, by inserting after all of said section and
 42 line the following:

43
 44 "376.387. 1. For purposes of this section, the following terms shall mean:

45 (1) "Covered person", [~~the same meaning as such term is defined in section 376.1257]~~ a
 46 policyholder, subscriber, enrollee, or other individual who receives prescription drug coverage
 47 through a pharmacy benefits manager;

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

49 (3) "Health carrier" or "carrier", the same meaning as such term is defined in section

1 376.1350;

2 (4) "Pharmacy", the same meaning as such term is defined in chapter 338;

3 (5) "Pharmacy benefits manager", the same meaning as such term is defined in section
4 376.388.

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

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

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

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

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

21 5. ~~[This section shall not apply with respect to claims under Medicare Part D, or any other~~
22 ~~plan administered or regulated solely under federal law, and to the extent this section may be~~
23 ~~preempted under the Employee Retirement Income Security Act of 1974 for self-funded employer-~~
24 ~~sponsored health benefit plans.~~

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

29 [7.] 6. Any entity that enters into a contract to sell, provide, pay, or reimburse a pharmacy in
30 the state for prescription drugs on behalf of itself or another entity shall define and apply the term
31 "generic", with respect to prescription drugs, to mean any "authorized generic drug", as defined in
32 21 CFR 314.3, approved under section 505(c) of the Federal Food, Drug, and Cosmetic Act, as
33 amended.

34 7. Any entity that enters into a contract to sell, provide, pay, or reimburse a pharmacy in the
35 state for prescription drugs on behalf of itself or another entity shall define and apply the term
36 "rebate" as having the same meaning given to the term in section 103.200.

37 8. A pharmacy benefits manager that has contracted with an entity to provide pharmacy
38 benefit management services for such an entity shall owe a fiduciary duty to that entity, and shall
39 discharge that duty in accordance with federal and state law.

40 9. The department of commerce and insurance shall enforce this section.

41 376.388. 1. As used in this section, unless the context requires otherwise, the following
42 terms shall mean:

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

45 (2) ~~["Health carrier", an entity subject to the insurance laws and regulations of this state that~~
46 ~~contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs~~
47 ~~of health care services, including a sickness and accident insurance company, a health maintenance~~
48 ~~organization, a nonprofit hospital and health service corporation, or any other entity providing a plan~~
49 ~~of health insurance, health benefits, or health services, except that such plan shall not include any~~

1 coverage pursuant to a liability insurance policy, workers' compensation insurance policy, or
 2 medical payments insurance issued as a supplement to a liability policy;

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

5 ~~[(4)]~~ (3) "Maximum allowable cost list" or "MAC list", a listing of drug products that meet
 6 the standard described in this section;

7 ~~[(5)]~~ (4) "Pharmacy", as such term is defined in chapter 338;

8 ~~[(6)]~~ (5) "Pharmacy benefits manager", an entity that ~~[contracts with pharmacies on behalf~~
 9 ~~of health carriers or any health plan sponsored by the state or a political subdivision of the state]~~
 10 administers or manages a pharmacy benefits plan or program;

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

14 (7) "Pharmacy benefits plan or program", a plan or program that pays for, reimburses,
 15 covers the cost of, or otherwise provides for pharmacist services to individuals who reside in or are
 16 employed in this state.

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

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

23 (2) Maintain a procedure to eliminate products from the maximum allowable cost list of
 24 drugs subject to such pricing or modify maximum allowable cost pricing at least every seven days,
 25 if such drugs do not meet the standards and requirements of this section, in order to remain
 26 consistent with pricing changes in the marketplace.

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

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

34 5. (1) All contracts between a pharmacy benefits manager and a contracted pharmacy or
 35 between a pharmacy benefits manager and a pharmacy's contracting representative or agent, such as
 36 a pharmacy services administrative organization, shall include a process to internally appeal,
 37 investigate, and resolve disputes regarding maximum allowable cost pricing. The process shall
 38 include the following:

39 ~~[(1)]~~ (a) The right to appeal shall be limited to fourteen calendar days following the
 40 reimbursement of the initial claim; and

41 ~~[(2)]~~ (b) A requirement that the pharmacy benefits manager shall respond to an appeal
 42 described in this subsection no later than fourteen calendar days after the date the appeal was
 43 received by such pharmacy benefits manager.

44 (2) If a reimbursement to a contracted pharmacy is below the pharmacy's cost to purchase
 45 the drug, the pharmacy benefits manager shall sustain an appeal and increase reimbursement to the
 46 pharmacy and other contracted pharmacies to cover the cost of purchasing the drug.

47 (3) A pharmacy benefits manager shall not reimburse a pharmacy or pharmacist in the state
 48 an amount less than the amount that the pharmacy benefits manager reimburses a pharmacy benefits
 49 manager affiliate for providing the same pharmacist services.

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

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

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

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

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

12 8. Appeals shall be upheld if:

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

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

17
18 Further amend said bill by amending the title, enacting clause, and intersectional references
19 accordingly.