

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

SENATE BILL NO. 457

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SATER.

Offered April 16, 2015.

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ADRIANE D. CROUSE, Secretary.

2178S.02P

AN ACT

To repeal section 338.200, RSMo, and to enact in lieu thereof three new sections relating to pharmacy.

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

Section A. Section 338.200, RSMo, is repealed and three new sections
2 enacted in lieu thereof, to be known as sections 338.075, 338.200, and 376.388,
3 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,
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, 2015, shall**
33 **be invalid and void.**

338.200. 1. In the event a pharmacist is unable to obtain refill
2 authorization from the prescriber due to death, incapacity, or when the
3 pharmacist is unable to obtain refill authorization from the prescriber, a
4 pharmacist may dispense an emergency supply of medication if:

5 (1) In the pharmacist's professional judgment, interruption of therapy
6 might reasonably produce undesirable health consequences;

7 (2) The pharmacy previously dispensed or refilled a prescription from the
8 applicable prescriber for the same patient and medication;

9 (3) The medication dispensed is not a controlled substance;

10 (4) The pharmacist informs the patient or the patient's agent either
11 verbally, electronically, or in writing at the time of dispensing that authorization
12 of a prescriber is required for future refills; and

13 (5) The pharmacist documents the emergency dispensing in the patient's
14 prescription record, as provided by the board by rule.

15 2. (1) If the pharmacist is unable to obtain refill authorization from the
16 prescriber, the amount dispensed shall be limited to the amount determined by
17 the pharmacist within his or her professional judgment as needed for the
18 emergency period, provided the amount dispensed shall not exceed a seven-day
19 supply.

20 (2) In the event of prescriber death or incapacity or inability of the
21 prescriber to provide medical services, the amount dispensed shall not exceed a
22 thirty-day supply.

23 3. Pharmacists or permit holders dispensing an emergency supply
24 pursuant to this section shall promptly notify the prescriber or the prescriber's
25 office of the emergency dispensing, as required by the board by rule.

26 4. An emergency supply may not be dispensed pursuant to this section if
27 the pharmacist has knowledge that the prescriber has otherwise prohibited or
28 restricted emergency dispensing for the applicable patient.

29 **5. The determination to dispense an emergency supply of**
30 **medication under this section shall only be made by a pharmacist**
31 **licensed by the board.**

32 **6.** The board shall promulgate rules to implement the provisions of this
33 section. Any rule or portion of a rule, as that term is defined in section 536.010,
34 that is created under the authority delegated in this section shall become effective
35 only if it complies with and is subject to all of the provisions of chapter 536 and,
36 if applicable, section 536.028. This section and chapter 536 are nonseverable and
37 if any of the powers vested with the general assembly pursuant to chapter 536 to
38 review, to delay the effective date, or to disapprove and annul a rule are
39 subsequently held unconstitutional, then the grant of rulemaking authority and
40 any rule proposed or adopted after August 28, 2013, shall be invalid and void.

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 benefit 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 licensed by the department of
24 insurance, financial institutions and professional registration under
25 chapter 376.

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

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

34 (2) Maintain a procedure to eliminate products from the
35 maximum allowable cost list of drugs subject to such pricing or modify
36 maximum allowable cost pricing within seven days if such drugs do not
37 meet the standards and requirements of this section in order to remain
38 consistent with pricing changes in the marketplace.

39 3. A pharmacy benefits manager shall reimburse pharmacies for
40 drugs subject to maximum allowable cost pricing based upon pricing
41 information which has been updated within seven days as set forth in
42 subdivision (1) of subsection 2 of this section.

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

49 5. All contracts between a pharmacy benefits manager and a
50 contracted pharmacy or between a pharmacy benefits manager and a
51 pharmacy's contracting representative or agent, such as a pharmacy
52 services administrative organization, shall include a process to

53 internally appeal, investigate, and resolve disputes regarding maximum
54 allowable cost pricing. The process shall include the following:

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

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

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

65 7. If the appeal is successful, the health carrier or pharmacy
66 benefits manager 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 health carrier or
71 pharmacy benefits 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.

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