

SECOND REGULAR SESSION

SENATE BILL NO. 895

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SATER.

Read 1st time February 19, 2014, and ordered printed.

TERRY L. SPIELER, Secretary.

6046S.011

AN ACT

To amend chapter 376, RSMo, by adding thereto one new section relating to pharmacy benefit managers.

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

Section A. Chapter 376, RSMo, is amended by adding thereto one new section, to be known as section 376.388, to read as follows:

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

(1) "Contracted pharmacy" or "pharmacy", a pharmacy located in Missouri participating in the network of a pharmacy benefit manager through a direct contract or through a contract with a pharmacy services administration organization or group purchasing organization;

(2) "Drug product reimbursement", the amount paid by a pharmacy benefit manager to a contracted pharmacy for the cost of the drug dispensed to a patient and does not include a dispensing or professional fee;

(3) "Pharmacy benefit manager" or "PBM", an entity that contracts with pharmacies on behalf of a health benefit plan, state agency, insurer, managed care organization, or other third-party payer to provide pharmacy health benefit services or administration;

(4) "Plan sponsor", the entity which contracts with the pharmacy benefit manager to process pharmacy claims on behalf of such entity;

(5) "Maximum allowable cost list" or "MAC list", a listing of drugs used by a pharmacy benefit manager setting the maximum allowable cost on which reimbursement to a pharmacy or pharmacist may be based;

(6) "Pharmacy benefit plan or program", a plan or program that

22 pays for, reimburses, covers the cost of, or otherwise provides for
23 pharmacist services to individuals who reside in or are employed in
24 this state;

25 (7) "Pharmacist", a licensed pharmacist as defined in chapter 338;

26 (8) "Pharmacy", as such term is defined in chapter 338; and

27 (9) "Pharmacist services", products, goods, or services provided
28 as a part of the practice of pharmacy in Missouri.

29 2. Before a pharmacy benefit manager places or continues a
30 particular drug on a maximum allowable cost list, the drug:

31 (1) Shall be listed as therapeutically equivalent and
32 pharmaceutically equivalent "A" or "B" rated in the United States Food
33 and Drug Administration's most recent version of the "Orange Book" or
34 "Green Book";

35 (2) Shall be available for purchase by each pharmacy in the state
36 from national or regional wholesalers operating in Missouri; and

37 (3) Shall not be obsolete or temporarily available.

38 3. For every drug for which the PBM establishes a maximum
39 allowable cost to determine the drug product reimbursement, the PBM
40 shall:

41 (1) Include in the contract with the pharmacy, information
42 identifying the national drug pricing compendia or sources used to
43 obtain the drug price data and the methodology used in preparing the
44 maximum allowable cost;

45 (2) Make available to a contracted pharmacy the drugs subject
46 to maximum allowable cost and the actual maximum allowable cost for
47 each drug;

48 (3) Provide a process for each pharmacy subject to the maximum
49 allowable cost list to receive prompt notification of an update to the
50 MAC list;

51 (4) Update its MAC list on a timely basis, but in no event longer
52 than seven calendar days from a change in the methodology on which
53 the MAC list is based or in the value of a variable involved in the
54 methodology; and

55 (5) Within three business days after the applicable fill date,
56 provide a reasonable administrative appeal procedure to allow
57 pharmacies to challenge maximum allowable costs for a specific drug
58 or drugs as:

59 (a) Not meeting the requirements of this section; or
60 (b) Being below the cost at which the pharmacy may obtain the
61 drug.

62 4. A process to appeal, investigate, and resolve disputes
63 regarding the maximum allowable cost pricing shall include the
64 following provisions:

65 (1) The right to appeal shall be limited to sixty days following
66 the initial claim;

67 (2) The appeal shall be investigated and resolved within ten
68 days;

69 (3) If the appeal is denied, the PBM shall provide the reason for
70 the denial and identify the national drug code of a drug product that
71 may be purchased by contracted pharmacies at a price at or below the
72 maximum allowable cost;

73 (4) For a period of one year from August 28, 2014, a process to
74 provide for retroactive reimbursements shall be provided.

75 5. If a challenge under subsection 4 of this section is upheld, the
76 PBM shall within seven business days after receipt of the affirmative
77 challenge either:

78 (1) Make the change in the maximum allowable cost;

79 (2) Permit the challenging pharmacy or pharmacist to reverse
80 and rebill the claim in question; or

81 (3) Make the change under subdivision (1) of this subsection
82 effective for each similarly situated pharmacy as defined by the payer
83 subject to the MAC list.

84 6. If the appeal is denied, the PBM shall provide the challenging
85 pharmacy or pharmacist the National Drug Code number from national
86 or regional wholesalers operating in Missouri.

87 7. A PBM is required to make the following disclosures to the
88 plan sponsor:

89 (1) The PBM shall disclose the basis for the methodology and
90 sources utilized to establish a multi-source generic pricing to the plan
91 sponsor. A copy of an applicable list shall be provided to the plan
92 sponsor when updated;

93 (2) If a PBM utilizes a multi-source generic list for drugs
94 dispensed at retail but does not utilize the same list for drugs
95 dispensed at mail, such fact shall be disclosed to the plan sponsor in

96 writing no later than twenty-one days prior to utilizing the list in the
97 plan sponsor's benefit;

98 (3) A PBM shall disclose to the plan sponsor if it is using more
99 than one multi-source generic drug list in the contracted pharmacy
100 network. If more than one list is used, the PBM shall disclose to the
101 plan sponsor any differences in reimbursement to the pharmacies
102 within the network regardless of their class of trade. The PBM shall
103 also disclose to the plan sponsor if the PBM is reimbursing the
104 pharmacies at a different rate than it is billing the plan sponsor.

105 8. This section does not apply to a MAC list maintained by the
106 MO HealthNet program.

107 9. Any PBM who fails to comply with the provisions of this
108 section shall be liable to the plan sponsor or pharmacy as applicable in
109 an amount equal to one hundred dollars for the first violation, two
110 hundred fifty dollars for the second violation, and one thousand dollars
111 for the third and any subsequent violation.

Bill ✓

Copy