

FIRST REGULAR SESSION

# HOUSE BILL NO. 780

## 98TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE MORRIS.

1841L.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

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

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*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 terms shall mean:**

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

(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 not licensed by the department of insurance, financial institutions and professional registration that contracts with pharmacies on behalf of a plan sponsor;

(4) "Plan sponsor", the entity which contracts with the pharmacy benefit manager to process claims submitted by pharmacies for reimbursement for drug products included on the maximum allowable cost list;

(5) "Maximum allowable cost list" or "MAC list", a listing of drug products that meet the standard described in subdivision (1) of subsection 2 of this section;

(6) "Pharmacy", as such term is defined in chapter 338.

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

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

20           **(1) Shall be listed as therapeutically equivalent and pharmaceutically equivalent**  
21 **in the United States Food and Drug Administration's most recent version of the "Orange**  
22 **Book" or its successor and eligible to be substituted by a pharmacist under section 338.056;**

23           **(2) Shall be available for purchase by a pharmacy, contracted with the PBM, in the**  
24 **state from national or regional wholesalers operating in Missouri; and**

25           **(3) Shall not be obsolete or only temporarily available.**

26           **3. For every drug for which the PBM establishes a maximum allowable cost to**  
27 **determine the drug product reimbursement, the PBM shall:**

28           **(1) Make available to a contracted pharmacy the drug products subject to the MAC**  
29 **list and the actual maximum allowable cost for each drug;**

30           **(2) Provide to each pharmacy, with a contract with a PBM, subject to the MAC list**  
31 **access to current date of service MAC list;**

32           **(3) Provide an appeal procedure as described in subsection 4 of this section to allow**  
33 **pharmacies to challenge maximum allowable costs for a specific drug or drugs as:**

34           **(a) Not meeting the requirements of this section; or**

35           **(b) Being below the cost at which the pharmacy may obtain the drug.**

36           **4. A PBM shall provide a reasonable process to appeal the maximum allowable cost**  
37 **amount which shall include the following provisions:**

38           **(1) The right to appeal shall be limited to thirty days following the initial claim;**

39           **(2) The appeal process and decision notification by the PBM shall not exceed a ten-**  
40 **day period;**

41           **(3) If the appeal is denied, the PBM shall provide the reason for the denial and**  
42 **identify the eleven digit national drug code of a drug product that may be purchased in**  
43 **accordance with this act.**

44           **5. If a determination is made based on an appeal under subsection 4 of this section**  
45 **that an additional reimbursement for a drug product is required, then such amount shall**  
46 **be paid to the pharmacy at the next regular payment cycle from the PBM to such**  
47 **pharmacy.**

48           **6. If a PBM utilizes a MAC list for drugs dispensed at retail but does not utilize the**  
49 **same list for drugs dispensed at mail, and the result to the plan sponsor is a higher cost to**  
50 **the plan sponsor or their employees, such fact shall be disclosed to the plan sponsor in**  
51 **writing no later than twenty-one days prior to utilizing the list in the plan sponsor's**  
52 **benefit.**

53           **7. This section does not apply to a MAC list maintained by the MO HealthNet**  
54 **program.**

55           **8. A PBM shall have a fiduciary responsibility to the plan sponsor.**

56           **9. A PBM shall disclose to the plan sponsor which drugs they have defined as**  
57 **generic or brand differently than as defined by the United States Food and Drug**  
58 **Administration.**

59           **10. Any PBM that fails to comply with the provisions of this section shall be subject**  
60 **to penalties allowed under section 374.049.**

61           **11. The director of the department of insurance, financial institutions and**  
62 **professional registration shall promulgate administrative rules to administer the provisions**  
63 **in this section, which shall establish the appropriate levels of violations under section**  
64 **374.049 for noncompliance with this section. Any rule or portion of a rule, as that term is**  
65 **defined in section 536.010 that is created under the authority delegated in this section shall**  
66 **become effective only if it complies with and is subject to all of the provisions of chapter**  
67 **536, and, if applicable, section 536.028. This section and chapter 536 are nonseverable and**  
68 **if any of the powers vested with the general assembly pursuant to chapter 536, to review,**  
69 **to delay the effective date, or to disapprove and annul a rule are subsequently held**  
70 **unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted**  
71 **after August 28, 2015, shall be invalid and void.**

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