

SENATE BILL NO. 426

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR ESLINGER.

1664S.01I

KRISTINA MARTIN, Secretary

AN ACT

To amend chapter 376, RSMo, by adding thereto one new section relating to payments for prescription drugs.

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

Section A. Chapter 376, RSMo, is amended by adding thereto
2 one new section, to be known as section 376.414, to read as
3 follows:

**376.414. 1. For purposes of this section, the
2 following terms mean:**

3 (1) "340B drug", a drug that is:

4 (a) A covered outpatient drug as defined in Section
5 340B of the Public Health Service Act, 42 U.S.C. Section
6 256b, enacted by Section 602 of the Veterans Health Care Act
7 of 1992, Pub. L. 102-585; and

8 (b) Purchased under an agreement entered into under 42
9 U.S.C. Section 256b;

10 (2) "Covered entity", the same meaning given to the
11 term in Section 340B(a)(4) of the Public Health Service Act,
12 42 U.S.C. Section 256b(a)(4);

13 (3) "Health carrier", the same meaning given to the
14 term in section 376.1350;

15 (4) "Pharmacy benefits manager", the same meaning
16 given to the term in section 376.388;

17 (5) "Specified pharmacy", a pharmacy licensed under
18 chapter 338 with which a covered entity has contracted to

19 dispense 340B drugs on behalf of the covered entity
20 regardless of whether the 340B drugs are distributed in
21 person or through the mail.

22 2. A health carrier or pharmacy benefits manager shall
23 not discriminate against a covered entity or a specified
24 pharmacy by doing any of the following:

25 (1) Reimbursing a covered entity or specified pharmacy
26 for a quantity of a 340B drug in an amount less than such
27 health carrier or pharmacy benefits manager would pay to any
28 other similarly situated pharmacy that is not a covered
29 entity or a specified pharmacy for such quantity of such
30 drug on the basis that the entity or pharmacy is a covered
31 entity or specified pharmacy or that the entity or pharmacy
32 dispenses 340B drugs;

33 (2) Imposing any terms or conditions on covered
34 entities or specified pharmacies that differ from such terms
35 or conditions applied to other similarly situated pharmacies
36 that are not covered entities or specified pharmacies on the
37 basis that the entity or pharmacy is a covered entity or
38 specified pharmacy or that the entity or pharmacy dispenses
39 340B drugs including, but not limited to, terms or
40 conditions with respect to any of the following:

41 (a) Fees, chargebacks, clawbacks, adjustments, or
42 other assessments;

43 (b) Professional dispensing fees;

44 (c) Restrictions or requirements regarding
45 participation in standard or preferred pharmacy networks;

46 (d) Requirements relating to the frequency or scope of
47 audits or to inventory management systems using generally
48 accepted accounting principles; and

49 (e) Any other restrictions, conditions, practices, or
50 policies that, as specified by the director of the

51 department of commerce and insurance, interfere with the
52 ability of a covered entity to maximize the value of
53 discounts provided under 42 U.S.C. Section 256b;

54 (3) Interfering with an individual's choice to receive
55 a 340B drug from a covered entity or specified pharmacy,
56 whether in person or via direct delivery, mail, or other
57 form of shipment;

58 (4) Requiring a covered entity or specified pharmacy
59 to identify, either directly or through a third party, 340B
60 drugs; or

61 (5) Refusing to contract with a covered entity or
62 specified pharmacy for reasons other than those that apply
63 equally to entities or pharmacies that are not covered
64 entities or specified pharmacies, or on the basis that:

65 (a) The entity or pharmacy is a covered entity or a
66 specified pharmacy; or

67 (b) The entity or pharmacy is described in any of
68 subparagraphs (A) to (O) of 42 U.S.C. Section 256b(a)(4).

69 3. The director of the department of commerce and
70 insurance shall impose a civil penalty on any pharmacy
71 benefits manager that violates the requirements of this
72 section. Such penalty shall not exceed five thousand
73 dollars per violation per day.

74 4. The director of the department of commerce and
75 insurance shall promulgate rules to implement the provisions
76 of this section. Any rule or portion of a rule, as that
77 term is defined in section 536.010, that is created under
78 the authority delegated in this section shall become
79 effective only if it complies with and is subject to all of
80 the provisions of chapter 536 and, if applicable, section
81 536.028. This section and chapter 536 are nonseverable and
82 if any of the powers vested with the general assembly

83 pursuant to chapter 536 to review, to delay the effective
84 date, or to disapprove and annul a rule are subsequently
85 held unconstitutional, then the grant of rulemaking
86 authority and any rule proposed or adopted after August 28,
87 2023, shall be invalid and void.

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