LAW WITHOUT GOVERNOR'S SIGNATURE

JULY 1, 2018

CHAPTER

429

PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND AND EIGHTEEN

H.P. 487 - L.D. 696

An Act To Require Notification of Adverse Changes to Prescription Drug Formularies in Health Plans

Be it enacted by the People of the State of Maine as follows:

PART A

Sec. A-1. 24-A MRSA §4311, sub-§1, as enacted by PL 1999, c. 742, §19 and affected by §21, is amended to read:

1. Formulary. If a health plan provides coverage for prescription drugs but the coverage limits such benefits to drugs included in a formulary, a carrier shall:

A. Ensure participation of participating physicians and pharmacists in the development of the formulary; ~~and~~

B. Provide exceptions to the formulary limitation when a nonformulary alternative is medically indicated, consistent with the utilization review standards in section 4304~~.~~;

C. Provide an enrollee with at least 60 days' written notice of an adverse change to a formulary, except that a carrier may provide less than 60 days' notice when a prescription drug is being removed from the formulary because of concerns about safety. The notice must use a conspicuous font and inform the enrollee of the adverse change to the formulary and advise the enrollee to consult with the enrollee's provider about the change. For the purposes of this paragraph, "adverse change to a formulary" means a change that removes a drug currently prescribed for that enrollee from the formulary applicable to the enrollee's health plan or a change that moves the prescribed drug to a tier with a higher cost-sharing requirement if the carrier uses a formulary with tiers;

D. If a prescription drug is removed from a formulary, notify an enrollee affected by the change of the enrollee's ability to request an exception to the formulary limitation pursuant to paragraph B and provide a form for the enrollee to use to request an exception. If an enrollee has already received prior authorization for that drug, the carrier shall continue to honor the existing authorization until it expires, as long as the

enrollee continues to be covered under the same health plan and the drug has not been removed from the formulary because of concerns about safety; and

E. Except when a drug has been removed because of concerns about safety, if a drug has been removed from a formulary and a request for an exception to a formulary limitation submitted by or on behalf of an enrollee is received prior to the effective date of the proposed change, continue to provide coverage for that drug until the carrier has rendered a decision on the enrollee's request for an exception to the formulary limitation.

Sec. A-2. Application. The requirements of this Act apply to all policies, contracts and certificates executed, delivered, issued for delivery, continued or renewed in this State on or after January 1, 2019. For purposes of this Act, all contracts are deemed to be renewed no later than the next yearly anniversary of the contract date.

PART B

Sec. B-1. Report on formulary changes. As determined by the Department of Professional and Financial Regulation, Bureau of Insurance, a carrier subject to the requirements of the Maine Revised Statutes, Title 24-A, section 4311, subsection 1 shall report quarterly no less than 30 days following the end of each quarter on any changes made by the carrier or any pharmacy benefits manager contracted by the carrier to any prescription drug formulary for a health plan offered in this State between January 1, 2019 and December 31, 2019. For purposes of this section, a change to a prescription drug formulary includes the movement of a prescription drug to a tier with higher cost sharing for that drug or the removal of a prescription drug from the formulary. The report must be in a form and manner determined by the Bureau of Insurance and include a list of formulary changes made by the carrier and the effective date of each formulary change; the prescription drugs affected by each formulary change by name and manufacturer; the number of enrollees affected by each formulary change; the expected impact of each formulary change on cost sharing for affected enrollees; a written explanation of the reasons for each formulary change; the number of exception requests made by enrollees with regard to each formulary change; and the number of exception requests granted, denied or withdrawn with regard to each formulary change. No less than 60 days following the end of each quarter, as determined by the Bureau of Insurance, the bureau shall compile this data for those carriers required by the bureau to report and submit a report to the joint standing committee of the Legislature having jurisdiction over insurance and financial services matters. The joint standing committee of the Legislature having jurisdiction over insurance and financial services matters may report out legislation related to the report to any regular or special session of the 129th Legislature.

Sec. B-2. Report on formulary changes in state employee health insurance program. The 3rd-party administrator or any pharmacy benefits manager contracted by the state employee health insurance program to administer prescription drug benefits for the group health plan offered to state employees and other eligible persons pursuant to the Maine Revised Statutes, Title 5, section 285 shall report quarterly no less than 30 days following the end of each quarter to the director of employee health and benefits within the Department of Administrative and Financial Services, Bureau of Human Resources on any changes made to any prescription drug formulary between

January 1, 2019 and December 31, 2019. For purposes of this section, a change to a prescription drug formulary includes the movement of a prescription drug to a tier with higher cost sharing for that drug or the removal of a prescription drug from the formulary. The report must be in a form and manner determined by the director and include a list of formulary changes made by the carrier and the effective date of each formulary change; the prescription drugs affected by each formulary change by name and manufacturer; the number of enrollees affected by each formulary change; the expected impact of each formulary change on cost sharing for affected enrollees; a written explanation of the reasons for each formulary change; the number of exception requests made by enrollees with regard to each formulary change; and the number of exceptions granted, denied or withdrawn with regard to each formulary change. No less than 60 days following the end of each quarter, the director shall report this data to the joint standing committee of the Legislature having jurisdiction over insurance and financial services matters. The joint standing committee of the Legislature having jurisdiction over insurance and financial services matters may report out legislation related to any report submitted pursuant to this section to any regular or special session of the 129th Legislature.