HOUSE BILL NO. HB0035

Pharmacy benefit manager regulation.

Sponsored by: Joint Corporations, Elections & Political Subdivisions Interim Committee

A BILL

for

1 AN ACT relating to insurance; regulating the provision of
2 pharmacy benefits; requiring licensure of pharmacy benefit
3 managers; establishing a licensing fee; providing
4 definitions; requiring the promulgation of rules; providing
5 requirements for audits conducted by pharmacy benefit
6 managers; providing requirements for drug maximum allowable
7 cost lists; and providing for an effective date.
8
9 *Be It Enacted by the Legislature of the State of Wyoming:*
10
11 **Section 1.** W.S. 26-52-101 through 26-52-104 are
12 created to read:
13
14 CHAPTER 52
15 PHARMACY BENEFIT MANAGERS

1
2 **26-52-101. Licensure of pharmacy benefit managers.**
3
4 No person shall act or hold himself out as a pharmacy
5 benefit manager in this state unless he obtains a license
6 from the department. The department shall through rules
7 establish license requirements and procedures for the
8 licensing of pharmacy benefit managers consistent with this
9 article. The requirements shall only provide for the
10 adequate identification of licensees and the payment of the
11 required licensing fee.
12
13 **26-52-102. Definitions.**
14
15 (a) As used in this article:
16
17 (i) "Claim" means a request from a pharmacy or
18 pharmacist to be reimbursed for the cost of filling or
19 refilling a prescription for a drug or for providing a
20 medical supply or device;
21

1 (ii) "Insurer" means the entity defined in W.S.
2 26-1-102(a)(xvi) and who provides health insurance coverage
3 in this state;
4
5 (iii) "List" means the list of drugs for which a
6 pharmacy benefit manager has established a maximum
7 allowable cost;
8
9 (iv) "Maximum allowable cost" means the maximum
10 amount that a pharmacy benefit manager will reimburse a
11 pharmacist or pharmacy for the cost of a generic drug;
12
13 (v) "Network providers" means those pharmacies
14 that provide covered health care services or supplies to an
15 insured or a member pursuant to a contract with a network
16 plan to act as a participating provider;
17
18 (vi) "Pharmacy" means an entity through which
19 pharmacists or other persons practice pharmacy as specified
20 in W.S. 33-24-124;
21
22 (vii) "Pharmacy benefit manager" means an entity
23 that contracts with a pharmacy on behalf of an insurer or

1 third party administrator to administer or manage
2 prescription drug benefits.
3
4 **26-52-103. Pharmacy benefit manager audits.**
5
6 (a) Any pharmacy benefit manager or person acting on
7 behalf of a pharmacy benefit manager who conducts an audit
8 of a pharmacy shall follow the following procedures:
9
10 (i) Provide written notice to the pharmacy not
11 less than ten (10) business days before conducting any
12 on-site, initial audit;
13
14 (ii) Conduct any audit requiring clinical or
15 professional judgment through or in consultation with a
16 licensed pharmacist;
17
18 (iii) Limit the period covered by the audit to
19 not more than two (2) years from the date that an audited
20 claim was adjudicated;
21
22 (iv) Allow verifiable statements or records,
23 including medication administration records of a nursing

1 home, assisted living facility, hospital, physician or
2 other authorized practitioner, to validate the pharmacy
3 record;
4
5 (v) Allow legal prescriptions, including
6 medication administration records, faxes, electronic
7 prescriptions or documented telephone calls from the
8 prescriber or the prescriber's agent, to validate claims in
9 connection with prescriptions, refills or changes in
10 prescriptions;
11
12 (vi) Apply the same standards and parameters to
13 each audited pharmacy as are applied to other similarly
14 situated pharmacies in a pharmacy network contract in this
15 state;
16
17 (vii) Not conduct any audit provided for in this
18 section during the first seven (7) calendar days of any
19 month without the consent of the audited pharmacy; and
20
21 (viii) Establish a written appeals process and
22 provide a copy to every audited pharmacy.
23

1 (b) A pharmacy benefit manager or person acting on
2 behalf of a pharmacy benefit manager who conducts an audit
3 of a pharmacy also shall comply with the following
4 requirements:
5
6 (i) Any finding of overpayment or underpayment
7 shall be based on the actual overpayment or underpayment
8 and not on a projection based on the number of patients
9 served having a similar diagnosis or on the number of
10 similar orders or refills for similar drugs;
11
12 (ii) Any finding of an overpayment shall not
13 include the dispensing fee amount unless:
14
15 (A) A prescription was not received by the
16 patient or the patient's designee;
17
18 (B) The prescriber denied authorization;
19
20 (C) The prescription dispensed was a
21 medication error by the pharmacy; or
22

1 (D) The identified overpayment is based
2 solely on an extra dispensing fee.
3
4 (iii) No audit shall use extrapolation in
5 calculating the recoupments or penalties for audits, unless
6 required by state or federal contracts;
7
8 (iv) No payment for the performance of an audit
9 shall be based on a percentage of the amount recovered;
10
11 (v) Interest shall not accrue during the audit
12 period;
13
14 (vi) No audit shall consider any clerical or
15 recordkeeping error, such as a typographical error,
16 scrivener's error or computer error regarding a required
17 document or record, as fraud. These errors may be subject
18 to recoupment. No recovery shall be assessed for errors
19 causing no financial harm to the patient or plan. Errors
20 that are the result of a pharmacy failing to comply with a
21 formal corrective action plan may be subject to recovery.
22 Any recoupment shall be based on the actual overpayment of
23 a claim;

1

2 (vii) A preliminary audit report shall be
3 delivered to the audited pharmacy within one hundred twenty
4 (120) days after the conclusion of the audit;

5

6 (viii) A pharmacy shall be allowed at least
7 thirty (30) days following receipt of the preliminary audit
8 report to provide documentation addressing any audit
9 finding, and a reasonable extension of time shall be
10 granted upon request;

11

12 (ix) A final audit report shall be delivered to
13 the pharmacy not more than one hundred twenty (120) days
14 after the preliminary audit report is received by the
15 pharmacy or submission of final internal appeal, whichever
16 is later;

17

18 (x) Recoupment of any disputed funds or
19 repayment of funds to the pharmacy benefit manager or
20 insurer by the pharmacy, if permitted pursuant to
21 contracts, shall occur, to the extent demonstrated or
22 documented in the pharmacy audit findings, after final
23 internal disposition of the audit including the appeals

1 process. If the identified discrepancy for an individual
2 audit exceeds fifteen thousand dollars ($15,000.00), any
3 future payments to the pharmacy may be withheld pending
4 finalization of the audit;
5
6 (xi) No chargebacks, recoupment or other
7 penalties may be assessed until the appeal process has been
8 exhausted and the final report issued.
9
10 (c) Subsections (a) and (b) of this section shall not
11 apply to:
12
13 (i) Audits in which suspected fraudulent
14 activity or other intentional or willful misrepresentation
15 is evidenced by a physical review, review of claims data,
16 statements or other investigative methods; or
17
18 (ii) Audits of claims paid for by federally
19 funded programs.
20
21 (d) This section shall apply to a contracted
22 pharmacy, or the pharmacy's designee who holds a contract
23 with a pharmacy benefit manager, entered into, renewed or

1 extended on or after July 1, 2016, and to all audits of
2 pharmacies on and after July 1, 2017.
3
4 **26-52-104. Maximum allowable cost.**
5
6 (a) To place a drug on a maximum allowable cost list,
7 a pharmacy benefit manager shall ensure that the drug is:
8
9 (i) Rated "A" or "B" in the most recent version
10 of the United States Food and Drug Administration's
11 Approved Drug Products with Therapeutic Equivalence
12 Evaluations (Orange Book), or rated "NR" or "NA," or has a
13 similar rating, by a nationally recognized reference;
14
15 (ii) Generally available for purchase by retail
16 pharmacies in the state from national or regional
17 wholesalers;
18
19 (iii) Not obsolete or temporarily unavailable.
20
21 (b) In formulating the maximum allowable cost price
22 for a drug, an insurer or pharmacy benefit manager shall
23 consider only the price of that drug and any drug listed as

1 therapeutically equivalent to that drug in the most recent
2 version of the United States Food and Drug Administration's
3 Approved Drug Products with Therapeutic Equivalence
4 Evaluations (Orange Book).
5
6 (c) Notwithstanding subsection (b) of this section,
7 if a therapeutically equivalent generic drug is unavailable
8 or has limited market presence, an insurer or pharmacy
9 benefit manager may place on a maximum allowable cost list
10 a drug that has:
11
12 (i) A "B" rating in the most recent version of
13 the United States Food and Drug Administration's Approved
14 Drug Products with Therapeutic Equivalence Evaluations
15 (Orange Book); or
16
17 (ii) An "NR" or "NA" rating, or a similar
18 rating, by a nationally recognized reference.
19
20 (d) A pharmacy benefit manager shall:
21
22 (i) Make available to each network provider at
23 the beginning of the term of the network provider's

1 contract, and upon renewal of the contract, the sources
2 utilized to determine the maximum allowable cost pricing;
3
4 (ii) Provide a telephone number at which a
5 network pharmacy may contact an employee of a pharmacy
6 benefit manager to discuss the pharmacy's appeal;
7
8 (iii) Provide a process for network providers to
9 readily access the maximum allowable cost applicable to
10 that provider;
11
12 (iv) Review and update applicable maximum
13 allowable cost price information at least once every seven
14 (7) business days to reflect any modification of maximum
15 allowable cost pricing; and
16
17 (v) Ensure that dispensing fees are not included
18 in the calculation of maximum allowable cost.
19
20 (e) A pharmacy benefit manager shall establish a
21 process by which a contracted pharmacy, or the pharmacy's
22 designee who holds a contract with the pharmacy benefit
23 manager, can appeal the provider's reimbursement for a drug

1 subject to maximum allowable cost pricing. A contracted
2 pharmacy, or the pharmacy's designee who holds a contract
3 with the pharmacy benefit manager, shall have up to ten
4 (10) business days after dispensing a drug subject to a
5 maximum allowable cost in which to appeal the amount of the
6 maximum allowable cost. A pharmacy benefit manager shall
7 respond to the appeal within ten (10) business days after
8 the contracted pharmacy makes the appeal.
9
10 (f) If a maximum allowable cost appeal is denied, the
11 pharmacy benefit manager shall provide to the appealing
12 pharmacy, or the pharmacy's designee who holds a contract
13 with the pharmacy benefit manager, the reason for the
14 denial and the national drug code number for the drug that
15 is available for purchase by pharmacies in the state from
16 national or regional wholesalers at a price at or below the
17 maximum allowable cost.
18
19 (g) If an appeal is upheld, the pharmacy benefit
20 manager shall make an adjustment to the applicable maximum
21 allowable cost no later than one (1) day after the date of
22 the determination and make the adjustment applicable to all
23 similarly situated network pharmacy providers, as

1 determined by the insurer or pharmacy benefit manager. The
2 pharmacy benefit manager shall allow the appealing pharmacy
3 to reverse and rebill the claim which was the subject of
4 the appeal.
5
6 (h) This section shall apply to a contracted
7 pharmacy, or the pharmacy's designee who holds a contract
8 with a pharmacy benefit manager, entered into, renewed or
9 extended on or after July 1, 2016, and to contracts on and
10 after July 1, 2017.
11
12 **Section 2.** W.S. 26-4-101(a) by creating a new
13 paragraph (xviii) is amended to read:
14
15 **26-4-101. Fee schedule.**
16
17 (a) The commissioner shall collect in advance or
18 contemporaneously fees, licenses and miscellaneous charges
19 as specified in this subsection. Collection may include the
20 acceptance of electronic funds transfer. All fees and other
21 charges collected by the commissioner as specified in this
22 subsection shall be nonrefundable:
23

1 (xviii) Pharmacy benefit manager (annually)
2 ....$500.00
3
4 **Section 3.** This act is effective July 1, 2016.
5
6 (END)