

## S.F. No. 917 – Modifications to the Pharmacy Benefit Manager Regulations (1<sup>st</sup> Engrossment)

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**Date:** March 10, 2021

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**S.F. 917** makes several modifications to the pharmacy benefit manager (PBM) regulatory chapter. It adds to the general business practices, requirements, and creates general reimbursement practice requirements for pharmacy benefit managers. It also modifies the maximum allowable cost pricing requirements and retroactive adjustments.

**Sections 1 and 2 (62W.02)** add to the definitions in chapter 62W a definition for pharmacy acquisition cost; and pharmaceutical wholesaler.

**Section 3 (62W.04)** adds the following to the PBM general business practices:

- **Paragraph (c)** prohibits a PBM from causing or knowingly permitting the use of advertisement, promotion, solicitation, representation, proposal, or offer that is untrue, deceptive, or misleading.
- **Paragraph (d)** prohibits a PBM from charging a pharmacy a fee related to the adjudication of a claim.
- **Paragraph (e)** prohibits a PBM from requiring pharmacy accreditation standards or certification requirements that are inconsistent with or more stringent than or in addition to requirements established by the board of pharmacy or permitted in this chapter.
- **Paragraph (f)** prohibits a PBM from amending or changing the terms of an existing contract between the PBM and the pharmacy unless (1) the change is disclosed to the pharmacy at least 45 days before the effective date of the change and the pharmacy agrees to the change; or (2) the change is required to be made under state or federal law or by a governmental regulatory authority.

**Section 5 (62W.045)** establishes general reimbursement practices for PBMs.

- **Paragraph (a)** prohibits a PBM from reimbursing a pharmacy in an amount less than the amount the PBM reimburses a PBM affiliate or subsidiary for providing the same prescription drug.

- **Paragraph (b)** prohibits a PBM from paying or reimbursing a pharmacy for the ingredient drug product component that is less than the national average drug acquisition cost or if that is unavailable, the wholesale acquisition cost.
- **Paragraph (c)** prohibits a PBM from making or permitting a reduction of payment for a prescription drug or service to a pharmacy under a reconciliation process to an effective rate of reimbursement, direct or indirect remuneration fees, or any other reduction or aggregate reduction of payment unless the reduction is the result of an audit performed under section 62W.09 and in accordance with section 62W.13.
- **Paragraph (d)** specifies that termination from the PBM's pharmacy network does not release the PBM from the obligation to make any payment due to the pharmacy for drugs or services rendered.

**Section 6 (62W.08)** makes changes to the maximum allowable cost pricing, including changes to the required appeals process.

- **Paragraph (a)** specifies that the PBM must provide the pharmacy with the maximum allowable cost price list before the initial contract is entered into and before contract renewal. A PBM is also required to update the maximum allowable cost price list within seven days from an increase of ten percent or more in the pharmacy acquisition cost from 60 percent or more of the pharmaceutical wholesalers doing business in the state; a change in the methodology on which the maximum allowable cost price list is based; or a change in the value of a variable involved in the methodology. The PBM must also ensure that the maximum allowable cost prices are not set below the pharmacy acquisition cost. The PBM must also identify upon request each maximum allowable price list that applies to the network pharmacy and disclose the sources utilized in setting the maximum allowable cost price rates on each maximum allowable cost price list included under the contract.
- **Paragraph (c)** requires each PBM to provide a process to appeal, investigate, and resolve disputes regarding the maximum allowable cost price including the ability of a pharmacy to challenge the maximum allowable cost price if the price does not meet the requirements of this chapter or is not set below the pharmacy acquisition cost.
- **Paragraph (d)** specifies what the appeal process must include a dedicated telephone number or email address or website to submit appeals and the ability to submit an appeal directly to the PBM.
- **Paragraph (e)** requires an appeal to be submitted to the PBM within 30 business days from the date of the initial claim and the PBM must investigate and resolve the appeal within 30 business days from the date the appeal was received. The PBM is also required to notify the pharmacy within three business days that the appeal has been received.
- **Paragraph (f)** requires that if the appeal is upheld the PBM must make an adjustment to the maximum allowable cost price list to at least the pharmacy acquisition cost; permit the pharmacy to reverse and rebill the claim in question; and provide the pharmacy with the NDC number on which the adjustment is based.
- **Paragraph (g)** requires that if the appeal is denied the PBM must provide the pharmacy with the reason for the denial and must identify the NDC number and the names of wholesalers operating in the state that have the drug currently in stock at a price below the maximum allowable price; or if the NDC number is not available below the pharmacy acquisition cost from the wholesaler from whom the pharmacy purchases a majority of their drugs for resale, then the PBM must adjust the maximum allowable cost above the challenging pharmacy's pharmacy acquisition cost and permit the pharmacy to reverse and rebill each claim affected by the inability to procure the drug at cost that is equal to or less than the previously challenged maximum allowable cost price.

- **Paragraph (h)** permits a pharmacy to decline to provide a drug or service to a patient or PBM if the pharmacy is paid less than the pharmacy acquisition cost.

**Section 7 (62W.09)** changes the time period that is covered by an audit from 24 months to a six-month period from the date the claim was submitted or adjudicated.

**Section 8 (62W.13)** specifies that a PBM must not retroactively deny or reduce a claim or aggregate of claims for reimbursement submitted by a pharmacy more than 30 days after the original claim was submitted unless the adjustment is a result of a pharmacy audit and it was determined that the original claim was submitted fraudulently; the original claim payment was incorrect because the pharmacy was already paid for the drug or service; or the drug or service was not rendered by the pharmacy or pharmacist.