

1.1 A bill for an act

1.2 relating to health; adjusting pharmacy reimbursement rates; amending Minnesota
1.3 Statutes 2009 Supplement, section 256B.0625, subdivision 13e.

1.4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.5 Section 1. Minnesota Statutes 2009 Supplement, section 256B.0625, subdivision 13e,
1.6 is amended to read:

1.7 Subd. 13e. **Payment rates.** (a) The basis for determining the amount of payment
1.8 shall be the lower of the actual acquisition costs of the drugs plus a fixed dispensing fee;
1.9 the maximum allowable cost set by the federal government or by the commissioner plus
1.10 the fixed dispensing fee; or the usual and customary price charged to the public. The
1.11 amount of payment basis must be reduced to reflect all discount amounts applied to the
1.12 charge by any provider/insurer agreement or contract for submitted charges to medical
1.13 assistance programs. The net submitted charge may not be greater than the patient liability
1.14 for the service. The pharmacy dispensing fee shall be \$3.65, except that the dispensing fee
1.15 for intravenous solutions which must be compounded by the pharmacist shall be \$8 per
1.16 bag, \$14 per bag for cancer chemotherapy products, and \$30 per bag for total parenteral
1.17 nutritional products dispensed in one liter quantities, or \$44 per bag for total parenteral
1.18 nutritional products dispensed in quantities greater than one liter. Actual acquisition cost
1.19 includes quantity and other special discounts except time and cash discounts. Effective
1.20 July 1, 2009, the actual acquisition cost of a drug shall be estimated by the commissioner,
1.21 at average wholesale price minus 15 percent. The actual acquisition cost of antihemophilic
1.22 factor drugs shall be estimated at the average wholesale price minus 30 percent. The
1.23 maximum allowable cost of a multisource drug may be set by the commissioner and it
1.24 shall be comparable to, but no higher than, the maximum amount paid by other third-party

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2.1 payors in this state who have maximum allowable cost programs. Establishment of the
2.2 amount of payment for drugs shall not be subject to the requirements of the Administrative
2.3 Procedure Act.

2.4 (b) Notwithstanding paragraph (a), the drug products named in the lawsuit styled
2.5 as New England Carpenters Health Benefits Fund v. First Data Bank, Inc., Civil Action
2.6 No. 05-11148-PBS (D. Mass. 2007), are reimbursed at the average wholesale price
2.7 minus 11.46 percent or the equivalent wholesale acquisition cost plus 6.25 percent,
2.8 whichever formula reimburses pharmacies at the equivalent reimbursement rate that was
2.9 in effect prior to the settlement agreement in this lawsuit. If there is a dispute regarding
2.10 reimbursement, the pharmacy shall contact the Department of Human Services to adjust
2.11 the reimbursement rate. If the dispute is not resolved between the pharmacy and the
2.12 Department of Human Services, either party may bring the dispute on reimbursement to
2.13 the drug formulary committee for a decision on reimbursement. The decision of the drug
2.14 formulary committee is binding upon both parties. The Department of Human Services
2.15 shall publish a list of the drugs affected by the settlement agreement on its Web site.

2.16 ~~(b)~~ (c) An additional dispensing fee of \$.30 may be added to the dispensing fee paid
2.17 to pharmacists for legend drug prescriptions dispensed to residents of long-term care
2.18 facilities when a unit dose blister card system, approved by the department, is used. Under
2.19 this type of dispensing system, the pharmacist must dispense a 30-day supply of drug.
2.20 The National Drug Code (NDC) from the drug container used to fill the blister card must
2.21 be identified on the claim to the department. The unit dose blister card containing the
2.22 drug must meet the packaging standards set forth in Minnesota Rules, part 6800.2700,
2.23 that govern the return of unused drugs to the pharmacy for reuse. The pharmacy provider
2.24 will be required to credit the department for the actual acquisition cost of all unused
2.25 drugs that are eligible for reuse. Over-the-counter medications must be dispensed in the
2.26 manufacturer's unopened package. The commissioner may permit the drug clozapine to be
2.27 dispensed in a quantity that is less than a 30-day supply.

2.28 ~~(c)~~ (d) Whenever a generically equivalent product is available, payment shall be on
2.29 the basis of the actual acquisition cost of the generic drug, or on the maximum allowable
2.30 cost established by the commissioner.

2.31 ~~(d)~~ (e) The basis for determining the amount of payment for drugs administered in
2.32 an outpatient setting shall be the lower of the usual and customary cost submitted by the
2.33 provider or the amount established for Medicare by the United States Department of
2.34 Health and Human Services pursuant to title XVIII, section 1847a of the federal Social
2.35 Security Act.

3.1 ~~(e)~~ (f) The commissioner may negotiate lower reimbursement rates for specialty
3.2 pharmacy products than the rates specified in paragraph (a). The commissioner may
3.3 require individuals enrolled in the health care programs administered by the department
3.4 to obtain specialty pharmacy products from providers with whom the commissioner has
3.5 negotiated lower reimbursement rates. Specialty pharmacy products are defined as those
3.6 used by a small number of recipients or recipients with complex and chronic diseases
3.7 that require expensive and challenging drug regimens. Examples of these conditions
3.8 include, but are not limited to: multiple sclerosis, HIV/AIDS, transplantation, hepatitis
3.9 C, growth hormone deficiency, Crohn's Disease, rheumatoid arthritis, and certain forms
3.10 of cancer. Specialty pharmaceutical products include injectable and infusion therapies,
3.11 biotechnology drugs, high-cost therapies, and therapies that require complex care. The
3.12 commissioner shall consult with the formulary committee to develop a list of specialty
3.13 pharmacy products subject to this paragraph. In consulting with the formulary committee
3.14 in developing this list, the commissioner shall take into consideration the population
3.15 served by specialty pharmacy products, the current delivery system and standard of care in
3.16 the state, and access to care issues. The commissioner shall have the discretion to adjust
3.17 the reimbursement rate to prevent access to care issues.