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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. **770**

02/02/2017 Authored by Baker, Flanagan, O'Neill, Schomacker, Maye Quade and others
The bill was read for the first time and referred to the Committee on Health and Human Services Reform
02/22/2017 Adoption of Report: Amended and re-referred to the Committee on Health and Human Services Finance

1.1 A bill for an act
1.2 relating to health care; modifying certain reimbursement provisions for direct
1.3 injectable drugs for certain conditions under medical assistance; amending
1.4 Minnesota Statutes 2016, section 256B.0625, subdivision 13e.

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

1.6 Section 1. Minnesota Statutes 2016, section 256B.0625, subdivision 13e, is amended to
1.7 read:

1.8 Subd. 13e. **Payment rates.** (a) The basis for determining the amount of payment shall
1.9 be the lower of the actual acquisition costs of the drugs or the maximum allowable cost by
1.10 the commissioner plus the fixed dispensing fee; or the usual and customary price charged
1.11 to the public. The amount of payment basis must be reduced to reflect all discount amounts
1.12 applied to the charge by any provider/insurer agreement or contract for submitted charges
1.13 to medical assistance programs. The net submitted charge may not be greater than the patient
1.14 liability for the service. The pharmacy dispensing fee shall be \$3.65 for legend prescription
1.15 drugs, except that the dispensing fee for intravenous solutions which must be compounded
1.16 by the pharmacist shall be \$8 per bag, \$14 per bag for cancer chemotherapy products, and
1.17 \$30 per bag for total parenteral nutritional products dispensed in one liter quantities, or \$44
1.18 per bag for total parenteral nutritional products dispensed in quantities greater than one liter.
1.19 The pharmacy dispensing fee for over-the-counter drugs shall be \$3.65, except that the fee
1.20 shall be \$1.31 for retrospectively billing pharmacies when billing for quantities less than
1.21 the number of units contained in the manufacturer's original package. Actual acquisition
1.22 cost includes quantity and other special discounts except time and cash discounts. The actual
1.23 acquisition cost of a drug shall be estimated by the commissioner at wholesale acquisition
1.24 cost plus four percent for independently owned pharmacies located in a designated rural

2.1 area within Minnesota, and at wholesale acquisition cost plus two percent for all other
2.2 pharmacies. A pharmacy is "independently owned" if it is one of four or fewer pharmacies
2.3 under the same ownership nationally. A "designated rural area" means an area defined as
2.4 a small rural area or isolated rural area according to the four-category classification of the
2.5 Rural Urban Commuting Area system developed for the United States Health Resources
2.6 and Services Administration. Effective January 1, 2014, the actual acquisition cost of a drug
2.7 acquired through the federal 340B Drug Pricing Program shall be estimated by the
2.8 commissioner at wholesale acquisition cost minus 40 percent. Wholesale acquisition cost
2.9 is defined as the manufacturer's list price for a drug or biological to wholesalers or direct
2.10 purchasers in the United States, not including prompt pay or other discounts, rebates, or
2.11 reductions in price, for the most recent month for which information is available, as reported
2.12 in wholesale price guides or other publications of drug or biological pricing data. The
2.13 maximum allowable cost of a multisource drug may be set by the commissioner and it shall
2.14 be comparable to, but no higher than, the maximum amount paid by other third-party payors
2.15 in this state who have maximum allowable cost programs. Establishment of the amount of
2.16 payment for drugs shall not be subject to the requirements of the Administrative Procedure
2.17 Act.

2.18 (b) Pharmacies dispensing prescriptions to residents of long-term care facilities using
2.19 an automated drug distribution system meeting the requirements of section 151.58, or a
2.20 packaging system meeting the packaging standards set forth in Minnesota Rules, part
2.21 6800.2700, that govern the return of unused drugs to the pharmacy for reuse, may employ
2.22 retrospective billing for prescription drugs dispensed to long-term care facility residents. A
2.23 retrospectively billing pharmacy must submit a claim only for the quantity of medication
2.24 used by the enrolled recipient during the defined billing period. A retrospectively billing
2.25 pharmacy must use a billing period not less than one calendar month or 30 days.

2.26 (c) An additional dispensing fee of \$.30 may be added to the dispensing fee paid to
2.27 pharmacists for legend drug prescriptions dispensed to residents of long-term care facilities
2.28 when a unit dose blister card system, approved by the department, is used. Under this type
2.29 of dispensing system, the pharmacist must dispense a 30-day supply of drug. The National
2.30 Drug Code (NDC) from the drug container used to fill the blister card must be identified
2.31 on the claim to the department. The unit dose blister card containing the drug must meet
2.32 the packaging standards set forth in Minnesota Rules, part 6800.2700, that govern the return
2.33 of unused drugs to the pharmacy for reuse. A pharmacy provider using packaging that meets
2.34 the standards set forth in Minnesota Rules, part 6800.2700, is required to credit the
2.35 department for the actual acquisition cost of all unused drugs that are eligible for reuse,

3.1 unless the pharmacy is using retrospective billing. The commissioner may permit the drug
3.2 clozapine to be dispensed in a quantity that is less than a 30-day supply.

3.3 (d) Whenever a maximum allowable cost has been set for a multisource drug, payment
3.4 shall be the lower of the usual and customary price charged to the public or the maximum
3.5 allowable cost established by the commissioner unless prior authorization for the brand
3.6 name product has been granted according to the criteria established by the Drug Formulary
3.7 Committee as required by subdivision 13f, paragraph (a), and the prescriber has indicated
3.8 "dispense as written" on the prescription in a manner consistent with section 151.21,
3.9 subdivision 2.

3.10 (e) The basis for determining the amount of payment for drugs administered in an
3.11 outpatient setting shall be the lower of the usual and customary cost submitted by the
3.12 provider, 106 percent of the average sales price as determined by the United States
3.13 Department of Health and Human Services pursuant to title XVIII, section 1847a of the
3.14 federal Social Security Act, the specialty pharmacy rate, or the maximum allowable cost
3.15 set by the commissioner. If average sales price is unavailable, the amount of payment must
3.16 be lower of the usual and customary cost submitted by the provider, the wholesale acquisition
3.17 cost, the specialty pharmacy rate, or the maximum allowable cost set by the commissioner.
3.18 Effective January 1, 2014, the commissioner shall discount the payment rate for drugs
3.19 obtained through the federal 340B Drug Pricing Program by 20 percent. With the exception
3.20 of paragraph (f), the payment for drugs administered in an outpatient setting shall be made
3.21 to the administering facility or practitioner. A retail or specialty pharmacy dispensing a drug
3.22 for administration in an outpatient setting is not eligible for direct reimbursement.

3.23 (f) Notwithstanding paragraph (e), payment for nonscheduled injectable drugs used to
3.24 treat substance abuse administered by a practitioner in an outpatient setting shall be made
3.25 either to the administering facility or the practitioner, or directly to the dispensing pharmacy.
3.26 The practitioner or administering facility shall submit the claim for the drug, if the practitioner
3.27 purchases the drug directly from a wholesale distributor licensed under section 151.47 or
3.28 from a manufacturer licensed under section 151.252. The dispensing pharmacy shall submit
3.29 the claim if the pharmacy dispenses the drug pursuant to a prescription issued by the
3.30 practitioner and delivers the filled prescription to the practitioner for subsequent
3.31 administration. Payment shall be made according to this section. The administering
3.32 practitioner and pharmacy shall ensure that claims are not duplicated. A pharmacy shall not
3.33 dispense a practitioner-administered injectable drug described in this paragraph directly to
3.34 an enrollee.

4.1 (g) The commissioner may negotiate lower reimbursement rates for specialty pharmacy
4.2 products than the rates specified in paragraph (a). The commissioner may require individuals
4.3 enrolled in the health care programs administered by the department to obtain specialty
4.4 pharmacy products from providers with whom the commissioner has negotiated lower
4.5 reimbursement rates. Specialty pharmacy products are defined as those used by a small
4.6 number of recipients or recipients with complex and chronic diseases that require expensive
4.7 and challenging drug regimens. Examples of these conditions include, but are not limited
4.8 to: multiple sclerosis, HIV/AIDS, transplantation, hepatitis C, growth hormone deficiency,
4.9 Crohn's Disease, rheumatoid arthritis, and certain forms of cancer. Specialty pharmaceutical
4.10 products include injectable and infusion therapies, biotechnology drugs, antihemophilic
4.11 factor products, high-cost therapies, and therapies that require complex care. The
4.12 commissioner shall consult with the formulary committee to develop a list of specialty
4.13 pharmacy products subject to this paragraph. In consulting with the formulary committee
4.14 in developing this list, the commissioner shall take into consideration the population served
4.15 by specialty pharmacy products, the current delivery system and standard of care in the
4.16 state, and access to care issues. The commissioner shall have the discretion to adjust the
4.17 reimbursement rate to prevent access to care issues.

4.18 ~~(g)~~ (h) Home infusion therapy services provided by home infusion therapy pharmacies
4.19 must be paid at rates according to subdivision 8d.