State of Minnesota

HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH
SESSION

HOUSE FILE NO. 1722

March 5, 2007
Authored by Murphy, E.; Thissen; Loeffler and Abeler
The bill was read for the first time and referred to the Committee on Health and Human Services

A bill for an act

relating to human services; changing the pharmacy dispensing fee; requiring a report on changes to pharmacy dispensing service fees; amending Minnesota Statutes 2006, section 256B.0625, subdivision 13e; Laws 2006, chapter 282, article 16, section 15, subdivision 6.

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

Section 1. Minnesota Statutes 2006, section 256B.0625, subdivision 13e, is amended to read:

Subd. 13e. **Payment rates.** (a) The basis for determining the amount of payment shall be the lower of the actual acquisition costs of the drugs plus a fixed dispensing fee; the maximum allowable cost set by the federal government or by the commissioner plus the fixed dispensing fee; or the usual and customary price charged to the public. The amount of payment basis must be reduced to reflect all discount amounts applied to the charge by any provider/insurer agreement or contract for submitted charges to medical assistance programs. The net submitted charge may not be greater than the patient liability for the service. Effective July 1, 2007, the pharmacy dispensing fee shall be $3.65 for single-source drugs and $12.92 for multiple-source drugs, except that the dispensing fee for intravenous solutions which must be compounded by the pharmacist shall be $8 per bag, $14 per bag for cancer chemotherapy products, and $30 per bag for total parenteral nutritional products dispensed in one liter quantities, or $44 per bag for total parenteral nutritional products dispensed in quantities greater than one liter. An inflation adjustment shall be made annually to the dispensing fee for multiple-source prescriptions based on the CPI-all items for urban consumers. Actual acquisition cost includes quantity and other special discounts except time and cash discounts. The actual acquisition cost of a drug shall be estimated by the commissioner, at average wholesale price minus 12 percent. The

actual acquisition cost of antihemophilic factor drugs shall be estimated at the average wholesale price minus 30 percent. The maximum allowable cost of a multisource drug may be set by the commissioner and it shall be comparable to, but no ~~higher than, the maximum amount paid by other third-party payors in this state who have maximum allowable cost programs~~ lower than the price of the drug available to retail pharmacies for purchase from prescription drug wholesalers. Establishment of the amount of payment for drugs shall not be subject to the requirements of the Administrative Procedure Act.

(b) Effective for pharmacy services rendered on or after July 1, 2007, the commissioner may, within the limits of available appropriation, increase dispensing fees to pharmacists and pharmacies deemed by the commissioner to be critical access pharmacy providers. Reimbursement to a critical access pharmacy provider may be increased by not more than 50 percent above the dispensing fee that would otherwise be paid to the provider. Payments to health plan companies shall be adjusted to reflect increased reimbursements to critical access pharmacy providers as approved by the commissioner. In determining which pharmacists and pharmacies shall be deemed critical access pharmacy providers, the commissioner shall review:

(1) the utilization rate in the service area in which the pharmacist or pharmacy operates for pharmacy services to patients covered by medical assistance, general assistance medical care, or MinnesotaCare as their primary source of coverage;

(2) the level of services provided by the pharmacist or pharmacy to patients covered by medical assistance, general assistance medical care, or MinnesotaCare as their primary source of coverage; and

(3) whether the level of services provided by the pharmacist or pharmacy is critical to maintaining adequate levels of patient access within the service area.

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

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

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

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

Sec. 2. Laws 2006, chapter 282, article 16, section 15, subdivision 6, is amended to read:

Subd. 6. **Recommendations.** (a) The advisory committee shall use the information from the cost of dispensing study and make recommendations to the commissioner on implementation of pharmacy reforms contained in title VI, chapter IV, of the Deficit Reduction Act of 2005. The commissioner shall report the findings of the study and the recommendations of the advisory committee to the legislature by February 1, 2007. The commissioner, in consultation with the advisory committee, shall make recommendations to the legislature on how to adequately adjust Medicaid reimbursement rates to pharmacies to cover the costs of dispensing and additional costs to pharmacies. Reports shall include

the current level of dispensing fees paid to providers for dispensing Medicaid prescription drugs and an estimate of revenues required to adequately adjust reimbursement to cover the cost to pharmacies for dispensing Medicaid prescription drugs to ensure that:

(1) reimbursement is sufficient to enlist an adequate number of participating pharmacy providers so that pharmacy services are as available for Medicaid recipients under the program as for the state's general population;

(2) Medicaid dispensing fees are adequate to reimburse pharmacy providers for the costs of dispensing prescriptions under the Medicaid program;

(3) Medicaid pharmacy reimbursement for multiple-source drugs included on the federal upper reimbursement limit is set at the level established by the federal government under United States Code, title 42, section 1396r-8(e)(5); and

(4) the new payment system does not create disincentives for pharmacists to dispense generic drugs.

(b) The Pharmacy Payment Reform Advisory Committee shall monitor the impact of the Deficit Reduction Act reforms and changes made to pharmacy-dispensing service fees, and shall report back to the legislature by December 31, 2008, their findings on:

(1) the impact of the reforms on pharmacies with more than ten percent of annual prescription volume from Medicaid, and those pharmacies in rural areas or areas with a significant Medicaid population;

(2) whether changes to pharmacy reimbursement for multiple-source prescriptions allowed for payment sufficient to cover the actual pharmacy costs for acquiring the drug product, and the cost of dispensing the prescription;

(3) the impact of changes in pharmacy reimbursement for multiple-source drugs on patient access to pharmacy services; and

(4) the impact of changes in pharmacy reimbursement for multiple-source drugs on generic dispensing rates.

(c) The advisory committee shall review the current method of reimbursement for single-source drugs, and develop recommendations to the legislature for the creation of a transparent reimbursement model for single-source drugs that would adequately reimburse pharmacies for drug product costs and pharmacy dispensing services. The commissioner shall report the findings of the impact study and the advisory committee's recommendations on reimbursement for single-source drugs to the legislature by December 31, 2008.

EFFECTIVE DATE. This section is effective the day following final enactment.