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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 1279

02/18/2021 Authored by Boldon, Baker, Davids, Munson, Gruenhagen and others
The bill was read for the first time and referred to the Committee on Commerce Finance and Policy

1.1 A bill for an act
1.2 relating to health care; modifying pharmacy benefit manager business practices;
1.3 establishing pharmacy benefit manager general reimbursement practices; modifying
1.4 maximum allowable cost pricing requirements; amending Minnesota Statutes 2020,
1.5 sections 62W.02, by adding subdivisions; 62W.04; 62W.08; 62W.13; proposing
1.6 coding for new law in Minnesota Statutes, chapter 62W.

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

1.8 Section 1. Minnesota Statutes 2020, section 62W.02, is amended by adding a subdivision
1.9 to read:

1.10 Subd. 13a. Pharmacy acquisition cost. "Pharmacy acquisition cost" means the amount
1.11 that a pharmaceutical wholesaler charges for a pharmaceutical product as listed on the
1.12 pharmacy's invoice.

1.13 Sec. 2. Minnesota Statutes 2020, section 62W.02, is amended by adding a subdivision to
1.14 read:

1.15 Subd. 15a. Pharmaceutical wholesaler. "Pharmaceutical wholesaler" means a person
1.16 that sells and distributes prescription pharmaceutical products, including but not limited to
1.17 brand name, generic, and over-the-counter drugs, and offers regular and private delivery to
1.18 a pharmacy.

1.19 Sec. 3. Minnesota Statutes 2020, section 62W.02, is amended by adding a subdivision to
1.20 read:

1.21 Subd. 21. Spread pricing. "Spread pricing" means a model of prescription drug pricing
1.22 in which the pharmacy benefit manager charges a plan sponsor a contracted price for

2.1 prescription drugs, and the contracted price for the prescription drugs differs from the amount
 2.2 the pharmacy benefit manager directly or indirectly pays the pharmacy for the prescription
 2.3 drugs.

2.4 Sec. 4. Minnesota Statutes 2020, section 62W.04, is amended to read:

2.5 **62W.04 PHARMACY BENEFIT MANAGER GENERAL BUSINESS PRACTICES.**

2.6 (a) A pharmacy benefit manager must exercise good faith and fair dealing in the
 2.7 performance of its contractual duties. A provision in a contract between a pharmacy benefit
 2.8 manager and a health carrier or a network pharmacy that attempts to waive or limit this
 2.9 obligation is void.

2.10 (b) A pharmacy benefit manager must notify a health carrier in writing of any activity,
 2.11 policy, or practice of the pharmacy benefit manager that directly or indirectly presents a
 2.12 conflict of interest with the duties imposed in this section.

2.13 (c) A pharmacy benefit manager must not cause or knowingly permit the use of
 2.14 advertisement, promotion, solicitation, representation, proposal, or offer that is untrue,
 2.15 deceptive, or misleading.

2.16 (d) A pharmacy benefit manager must not charge a pharmacy a fee related to the
 2.17 adjudication of a claim, including but not limited to:

2.18 (1) the receipt and processing of a pharmacy claim;

2.19 (2) the development or management of claims processing services in a pharmacy benefit
 2.20 manger network; or

2.21 (3) participation in a pharmacy benefit network.

2.22 (e) A pharmacy benefit manager must not require pharmacy accreditation standards or
 2.23 certification requirements that are inconsistent with, more stringent than, or in addition to
 2.24 requirements established by the board of pharmacy or as permitted under this chapter.

2.25 Sec. 5. **[62W.045] PHARMACY BENEFIT MANAGER GENERAL**
 2.26 **REIMBURSEMENT PRACTICES.**

2.27 (a) A pharmacy benefit manager must not reimburse a pharmacy in an amount less than
 2.28 the amount the pharmacy benefit manger reimburses a pharmacy benefit manager affiliate
 2.29 or subsidiary for providing the same prescription drug. The amount must be calculated on
 2.30 a per unit basis using the same generic product identifier or generic code number.

3.1 (b) A pharmacy benefit manager must not pay or reimburse a pharmacy for the ingredient
3.2 drug product component less than the national average drug acquisition cost or, if the national
3.3 drug acquisition cost is unavailable, the wholesale acquisition cost.

3.4 (c) A pharmacy benefit manager must not make or permit any reduction of payment for
3.5 a prescription drug or service either directly or indirectly to a pharmacy under a reconciliation
3.6 process to an effective rate of reimbursement, direct or indirect remuneration fees, or any
3.7 other reduction or aggregate reduction of payment.

3.8 (d) A pharmacy benefit manager is prohibited from conducting spread pricing.

3.9 (e) Termination of a pharmacy from the pharmacy benefit manager network does not
3.10 release the pharmacy benefit manager from the obligation to make any payment due to the
3.11 pharmacy for drugs or services rendered.

3.12 Sec. 6. Minnesota Statutes 2020, section 62W.08, is amended to read:

3.13 **62W.08 MAXIMUM ALLOWABLE COST PRICING.**

3.14 (a) With respect to each contract and contract renewal between a pharmacy benefit
3.15 manager and a pharmacy, the pharmacy benefits manager must:

3.16 (1) provide to the pharmacy, at the beginning of each contract and contract renewal, the
3.17 sources utilized to determine the maximum allowable cost pricing of the pharmacy benefit
3.18 manager;

3.19 (2) update any maximum allowable cost price list at least every seven business days,
3.20 noting any price changes from the previous list, and within seven calendar days from:

3.21 (i) an increase of ten percent or more in the pharmacy acquisition cost from 60 percent
3.22 or more of the pharmaceutical wholesalers doing business in the state;

3.23 (ii) a change in the methodology on which the maximum allowable cost price list is
3.24 based; or

3.25 (iii) a change in the value of a variable involved in the methodology.

3.26 The pharmacy benefit manager must provide a means by which network pharmacies may
3.27 promptly review current prices in an electronic, print, or telephonic format within one
3.28 business day at no cost to the pharmacy;

3.29 (3) maintain a procedure to eliminate products from the list of drugs subject to maximum
3.30 allowable cost pricing in a timely manner in order to remain consistent with changes in the
3.31 marketplace;

4.1 (4) ensure that the maximum allowable cost prices are not set below sources utilized by
 4.2 the pharmacy benefits manager and set below the pharmacy acquisition cost; and

4.3 (5) upon request of a network pharmacy, identify each maximum allowable price list
 4.4 that applies to the network pharmacy, and disclose the sources utilized for setting maximum
 4.5 allowable cost price rates on each maximum allowable cost price list included under the
 4.6 contract ~~and identify each maximum allowable cost price list that applies to the network~~
 4.7 ~~pharmacy, including the following:~~

4.8 (i) average acquisition cost, including national average drug acquisition cost;

4.9 (ii) average manufacturer price;

4.10 (iii) average wholesale price;

4.11 (iv) brand effective rate or generic effective rate;

4.12 (v) discount indexing;

4.13 (vi) federal upper limits;

4.14 (vii) wholesale acquisition cost; and

4.15 (viii) any other term that a pharmacy benefit manager or plan sponsor may use to establish
 4.16 the maximum allowable cost price for a prescription drug.

4.17 ~~A~~ The pharmacy benefit manager must make ~~the list of the maximum allowable costs~~ cost
 4.18 price list available to a ~~contracted~~ network pharmacy in a format that is readily accessible
 4.19 and usable to the network pharmacy.

4.20 (b) A pharmacy benefit manager must not place a prescription drug on a maximum
 4.21 allowable cost list unless the drug is available for purchase by pharmacies in this state from
 4.22 a national or regional drug wholesaler and is not obsolete.

4.23 (c) Each contract between a pharmacy benefit manager and a pharmacy must ~~include~~
 4.24 provide a process to appeal, investigate, and resolve disputes regarding maximum allowable
 4.25 cost pricing that includes the ability of a pharmacy to challenge the maximum allowable
 4.26 cost price if the price:

4.27 (1) ~~a 15-business-day limit on the right to appeal following the initial claim~~ does not
 4.28 meet the requirements of this chapter; or

4.29 (2) ~~a requirement that the appeal be investigated and resolved within seven business~~
 4.30 ~~days after the appeal is received; and~~ is below the pharmacy acquisition cost.

5.1 ~~(3) a requirement that a pharmacy benefit manager provide a reason for any appeal denial~~
5.2 ~~and identify the national drug code of a drug that may be purchased by the pharmacy at a~~
5.3 ~~price at or below the maximum allowable cost price as determined by the pharmacy benefit~~
5.4 ~~manager.~~

5.5 ~~(d) If an appeal is upheld, the pharmacy benefit manager must make an adjustment to~~
5.6 ~~the maximum allowable cost price no later than one business day after the date of~~
5.7 ~~determination. The pharmacy benefit manager must make the price adjustment applicable~~
5.8 ~~to all similarly situated network pharmacy providers as defined by the plan sponsor. The~~
5.9 ~~appeal process must include:~~

5.10 ~~(1) a dedicated telephone number and e-mail address or website for the purpose of~~
5.11 ~~submitting an appeal; and~~

5.12 ~~(2) the ability to submit an appeal directly to the pharmacy benefit manager regarding~~
5.13 ~~the pharmacy benefit plan or program or through a pharmacy service administrative program.~~

5.14 ~~(e) Any appeal must be submitted to the pharmacy benefit manager within 30 business~~
5.15 ~~days from the date of the initial claim. The pharmacy benefit manager must investigate and~~
5.16 ~~resolve the appeal within 30 business days from the date the appeal is received.~~

5.17 ~~(f) If the appeal is upheld, the pharmacy benefit manager must:~~

5.18 ~~(1) make an adjustment to the maximum allowable cost price list to at least the pharmacy~~
5.19 ~~acquisition cost no later than one business day after the date of determination and make the~~
5.20 ~~price adjustment applicable to all similarly situated network pharmacy providers as defined~~
5.21 ~~by the plan sponsor;~~

5.22 ~~(2) permit the challenging pharmacy to reverse and rebill the claim in question; and~~

5.23 ~~(3) provide to the pharmacy the National Drug Code number on which the adjustment~~
5.24 ~~is based.~~

5.25 ~~(g) If the appeal is denied, the pharmacy benefit manager must provide the challenging~~
5.26 ~~pharmacy with the reason for the denial, and:~~

5.27 ~~(1) identify the National Drug Code number and the names of the national or regional~~
5.28 ~~pharmaceutical wholesalers operating in this state that have the drug currently in stock at~~
5.29 ~~a price below the maximum allowable cost price; or~~

5.30 ~~(2) if the National Drug Code number provided by the pharmacy benefit manager is not~~
5.31 ~~available below the pharmacy acquisition cost from the pharmaceutical wholesaler from~~
5.32 ~~whom the pharmacy purchases the majority of prescription drugs for resale, then the~~

6.1 pharmacy benefit manager must adjust the maximum allowable cost price above the
6.2 challenging pharmacy's pharmacy acquisition cost and permit the pharmacy to reverse and
6.3 rebill each claim affected by the inability to procure the drug at a cost that is equal to or
6.4 less than the previously challenged maximum allowable cost price.

6.5 (h) A pharmacy may decline to provide a prescription drug or services to a patient or
6.6 pharmacy benefit manager if, as a result of a maximum allowable cost pricing, a pharmacy
6.7 is to be paid less than the pharmacy acquisition cost of the pharmacy dispensing the
6.8 prescription drug or providing the pharmacy services.

6.9 Sec. 7. Minnesota Statutes 2020, section 62W.13, is amended to read:

6.10 **62W.13 RETROACTIVE ADJUSTMENTS.**

6.11 No pharmacy benefit manager shall directly or indirectly retroactively adjust deny or
6.12 reduce a claim or aggregate of claims for reimbursement submitted by a pharmacy for a
6.13 prescription drug, unless the adjustment is a result of a:

6.14 (1) pharmacy audit conducted in accordance with section 62W.09 and it was determined
6.15 that:

6.16 (i) the original claim was submitted fraudulently;

6.17 (ii) the original claim payment was incorrect because the pharmacy was already paid
6.18 for the prescription drug or service; or

6.19 (iii) the prescription drug or service was not properly rendered by the pharmacy or
6.20 pharmacist; or

6.21 (2) technical billing error.