State of Minnesota

HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 1872

02/25/2014 Authored by Atkins, Davids, Abeler and Morgan
The bill was read for the first time and referred to the Committee on Health and Human Services Policy
03/10/2014 Adoption of Report: Amended and re-referred to the Committee on Commerce and Consumer Protection Finance and Policy

A bill for an act

relating to health; setting requirements for the use of maximum allowable cost pricing; setting requirements for the designation of specialty drugs and the filling of specialty drug prescriptions; allowing community/outpatient and long-term care pharmacies to fill mail-order or extended days supply prescriptions; setting requirements for the use of pharmacy utilization and claims data; proposing coding for new law in Minnesota Statutes, chapter 151.

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

Section 1. **[151.71] DEFINITIONS.**

Subdivision 1. **Applicability.** For purposes of sections 151.71 to 151.75, the following definitions apply.

Subd. 2. **Community/outpatient pharmacy.** "Community/outpatient pharmacy" has the meaning provided in Minnesota Rules, part 6800.0100, subpart 2.

Subd. 3. **Covered individual.** "Covered individual" means an individual receiving prescription drug coverage under a health plan through a pharmacy benefit manager, or through an employee benefit plan established or maintained by a plan sponsor.

Subd. 4. **Extended days supply.** "Extended days supply" means a medication supply greater than the quantity considered by the health plan to be a one-month supply.

Subd. 5. **Health care provider.** "Health care provider" has the meaning provided in section 62J.03, subdivision 8, except the term also includes nursing homes.

Subd. 6. **Health plan.** "Health plan" has the meaning provided in section 62Q.01, subdivision 3.

Subd. 7. **Health plan company.** "Health plan company" has the meaning provided in section 62Q.01, subdivision 4.

Subd. 8. **Long-term care pharmacy.** "Long-term care pharmacy" has the meaning provided in Minnesota Rules, part 6800.0100, subpart 4.

Subd. 9. **Mail-order pharmacy.** "Mail-order pharmacy" means a pharmacy licensed under this chapter that:

(1) has the primary business of receiving prescription drug orders by mail or electronic transmission;

(2) dispenses prescribed drugs to patients through the use of mail or a private delivery service; and

(3) primarily consults with patients by mail or electronic means.

Subd. 10. **Managed care organization.** "Managed care organization" has the meaning provided in section 62Q.01, subdivision 5.

Subd. 11. **Maximum allowable cost.** "Maximum allowable cost" means:

(1) a maximum reimbursement amount for a group of therapeutically and pharmaceutically equivalent multiple-source drugs that are listed in the most recent edition of the Approved Drug Products with Therapeutic Equivalence Evaluations published by the United States Food and Drug Administration or that may be substituted in accordance with section 151.21; or

(2) any similar reimbursement amount that is used by a pharmacy benefit manager to reimburse pharmacies for multiple-source drugs.

Subd. 12. **Nationally available.** "Nationally available" means that all pharmacies in Minnesota can purchase the drug, without limitation, from regional or national wholesalers, and that the product is not obsolete or temporarily unavailable.

Subd. 13. **Pharmacy.** "Pharmacy" has the meaning provided in section 151.01, subdivision 2.

Subd. 14. **Pharmacy benefit manager.** "Pharmacy benefit manager" means an entity that contracts with pharmacies on behalf of a health plan, state agency, health plan company, managed care organization, or other third-party payor to provide pharmacy benefit services or administration.

Subd. 15. **Plan sponsor.** "Plan sponsor" has the meaning provided in section 151.61, subdivision 4.

Subd. 16. **Specialty drug.** "Specialty drug" means a prescription drug that requires special handling, special administration, unique inventory management, a high level of patient monitoring, or more intense patient support than conventional therapies. For purposes of medical assistance, specialty drug means specialty pharmacy products defined under section 256B.0625, subdivision 13e, paragraph (e).

Subd. 17. **Therapeutically equivalent.** "Therapeutically equivalent" means the drug is identified as therapeutically or pharmaceutically equivalent or "A" rated by the United States Food and Drug Administration or that may be substituted in accordance with section 151.21.

Sec. 2. **[151.72] MAXIMUM ALLOWABLE COST PRICING.**

Subdivision 1. **Limits on use of maximum allowable cost pricing.** (a) A pharmacy benefit manager may not place a prescription drug on a maximum allowable cost pricing index or create for a prescription drug a maximum allowable cost rate until after the six-month period of generic exclusivity, and only if the prescription drug has three or more nationally available and therapeutically equivalent drugs, including the brand product.

(b) A pharmacy benefit manager shall remove a prescription drug from a maximum allowable cost pricing index, or eliminate the maximum allowable cost rate, if the criterion related to the number of nationally available and therapeutically equivalent drugs in paragraph (a) cannot be met due to changes in the national marketplace for prescription drugs. The removal of the drug or elimination of the rate must be made in a timely manner.

Subd. 2. **Notice requirements for use of maximum allowable cost pricing.** A pharmacy benefit manager shall disclose to a pharmacy with which it has contracted, through the term of the contract:

(1) at the beginning of each calendar year, the basis of the methodology and the sources used to establish the maximum allowable cost pricing index or maximum allowable cost rates used by the pharmacy benefit manager; and

(2) the maximum allowable cost pricing index or maximum allowable cost rates used by the pharmacy benefit manager, updated at least once every seven calendar days and provided in a readily accessible and searchable format that retains a record of index or rate changes and includes, at a minimum, the drug name, drug strength, dosage form, maximum allowable cost price, at least one national drug code for each product the maximum allowable cost price applies to, and a network identifier.

Subd. 3. **Contesting a rate.** A pharmacy benefit manager shall establish a written procedure by which a pharmacy may contest a maximum allowable cost pricing index or maximum allowable cost rate. The procedure established must require a pharmacy benefit manager to respond to a pharmacy that has contested a pricing index or rate within 15 calendar days. If the pharmacy benefit manager changes the pricing index or rate, the change must:

(1) become effective on the date on which the pharmacy initiated proceedings under this subdivision; and

(2) apply to all pharmacies in the pharmacy network served by the pharmacy benefit manager.

EFFECTIVE DATE. This section is effective August 1, 2014, and applies to pharmacy benefit manager contracts with pharmacies and pharmacists entered into or renewed on or after that date.

Sec. 3. **[151.73] SPECIALTY DRUGS.**

Subdivision 1. **Designation of specialty drugs.** A pharmacy benefit manager may designate certain prescription drugs as specialty drugs on a formulary.

Subd. 2. **Filling specialty drug prescriptions.** If a pharmacy benefit manager designates certain prescription drugs as specialty drugs on the formulary, the pharmacy benefit manager shall allow a covered individual to fill a prescription for a specialty drug at any willing pharmacy, if the pharmacy or pharmacist:

(1) has the specialty drug in inventory or has ready access to the specialty drug;

(2) is capable of complying with any special handling, special administration, inventory management, patient monitoring, patient education and maintenance, and any other patient support requirements for the specialty drug; and

(3) accepts the same rate that the pharmacy benefit manager applies to other pharmacies or pharmacists for filling a prescription for that specialty drug.

EFFECTIVE DATE. This section is effective August 1, 2014, and applies to pharmacy benefit manager contracts with pharmacies and pharmacists entered into or renewed on or after that date.

Sec. 4. **[151.74] MAIL ORDER OR EXTENDED DAYS SUPPLY PRESCRIPTIONS.**

Subdivision 1. **Filling prescriptions.** A pharmacy benefit manager that is under contract with, or under the control of, a plan sponsor shall permit a covered individual to fill a prescription at any pharmacy willing to meet the payment rate, terms, and conditions of the plan's mail order or extended days supply network.

Subd. 2. **Cost-sharing.** A pharmacy benefit manager may not impose cost-sharing or other requirements on a covered individual who elects to fill a prescription at a community/outpatient pharmacy or long-term care pharmacy that has accepted the terms and conditions of the plan's mail order or extended days supply network, that are different from the cost-sharing or other requirements that the pharmacy benefit manager imposes on a covered individual who elects to fill a prescription at any mail-order pharmacy.

Subd. 3. **Pharmacy reimbursement.** A pharmacy benefit manager shall use the same pricing benchmarks, indices, and formulas when reimbursing pharmacies under this section, regardless of whether the pharmacy is a mail-order pharmacy, a community/outpatient pharmacy, or a long-term care pharmacy.

EFFECTIVE DATE. This section is effective August 1, 2014, and applies to pharmacy benefit manager contracts with pharmacies, pharmacists, and plan sponsors entered into or renewed on or after that date.

Sec. 5. **[151.75] PATIENT DATA.**

Subdivision 1. **Requirement.** A pharmacy benefit manager shall adhere to the criteria specified in this section when handling personally identifiable utilization and claims data or other sensitive patient data.

Subd. 2. **Notification.** A pharmacy benefit manager shall notify the plan sponsor if it intends to sell, lease, or rent utilization or claims data for individuals covered by the plan sponsor that the pharmacy benefit manager possesses. A pharmacy benefit manager shall notify the plan sponsor 30 days before selling, leasing, or renting utilization or claims data, and provide the plan sponsor with the name of the potential purchaser of the data and information on the expected use. A pharmacy benefit manager shall not sell, lease, or rent utilization or claims data without written approval from the plan sponsor.

Subd. 3. **Opt out for individuals.** The pharmacy benefit manager must also allow each individual covered by a health plan the opportunity to opt out of the sharing of utilization or claims data for that individual for marketing purposes.

Subd. 4. **Data transmission to pharmacies.** A pharmacy benefit manager shall not transmit any personally identifiable utilization or claims data to a pharmacy owned by a pharmacy benefit manager, unless the patient has voluntarily elected to fill that particular prescription at the pharmacy owned by the pharmacy benefit manager.

Subd. 5. **Clinical use.** Nothing in this section is intended to limit the sharing of data between health care providers for treatment purposes.

EFFECTIVE DATE. This section is effective August 1, 2014, and applies to pharmacy benefit manager contracts with pharmacies, pharmacists, and plan sponsors entered into or renewed on or after that date.

Sec. 6. **[151.76] APPLICABILITY.**

Sections 151.71 to 151.75 do not apply to the medical assistance and MinnesotaCare programs.