

**5221.4070 PHARMACY.**

Subpart 1. **Substitution of generically equivalent drugs.** A generically equivalent drug must be dispensed according to Minnesota Statutes, section 151.21.

Subp. 1a. **Definitions.** The terms in this part have the following meanings:

A. "Community/retail pharmacy" has the meaning given in Minnesota Rules, part 6800.0100, subpart 2.

B. "Dispense" has the meaning given in Minnesota Statutes, section 151.01.

C. "Drug" has the meaning given in Minnesota Statutes, section 151.01.

D. "Hospital pharmacy" has the meaning given in Minnesota Rules, part 6800.0100, subpart 3.

E. "Large hospital" is a hospital with more than 100 licensed beds.

F. "Pharmacy" has the meaning given in Minnesota Statutes, section 151.01, and includes:

(1) community/retail pharmacies;

(2) hospital pharmacies; and

(3) persons or entities that the pharmacy has designated by contract or other means to act on its behalf to submit its charges to the workers' compensation payer.

G. "Practitioner" has the meaning given in Minnesota Statutes, section 151.01, and includes persons or entities that the practitioner has designated by contract or other means to act on its behalf to submit its charges to the workers' compensation payer.

H. "Usual and customary charge" has the meaning given in part 5221.0500, subparts 1, item B, and 2, item B, subitem (1).

I. "Workers' compensation payer" or "payer" means any of the following entities:

(1) the workers' compensation insurer or self-insured employer liable for a claim under Minnesota Statutes, chapter 176;

(2) the special compensation fund liable for a claim under Minnesota Statutes, section 176.183, where the employer was uninsured at the time of the injury; or

(3) any other person or entity that the workers' compensation payer has designated by contract or other means to act on its behalf in paying drug charges, or determining the compensability or reasonableness and necessity of drug charges under Minnesota Statutes, chapter 176.

**Subp. 2. Procedure code; usual and customary charge.**

A. Providers must use the procedure codes adopted under United States Code, title 42, sections 1320d to 1320d-8, as amended, that are in effect on the date the drug was dispensed. For drugs dispensed from a community/retail pharmacy, the procedure code is the applicable code in the National Drug Code Directory maintained and published by the federal Department of Health and Human Services. Procedure codes are not required for over-the-counter drugs.

B. An entity that is designated by the pharmacy or practitioner to submit its charges for a drug to the workers' compensation payer shall not submit a charge that is more than the pharmacy's or practitioner's usual and customary charge for the drug at the time it is dispensed.

**Subp. 3. Maximum fee.**

A. Except as provided in subparts 4 and 5, the workers' compensation payer's liability for compensable prescription drugs dispensed for outpatient use by a large hospital pharmacy, practitioner, or community/retail pharmacy shall be limited to the lower of:

(1) the sum of the average wholesale price (AWP) of the drug on the date the drug was dispensed, and a professional dispensing fee of \$5.14 per prescription filled; or

(2) the pharmacy's or practitioner's usual and customary charge for the drug at the time it is dispensed.

B. Except as provided in subparts 4 and 5, the workers' compensation payer's liability for compensable over-the-counter drugs dispensed for outpatient use by a large hospital pharmacy, practitioner, or community/retail pharmacy shall be, on the date the drug was dispensed, the lower of:

(1) the actual retail price of the drug; or

(2) the sum of the average wholesale price (AWP) of the drug and a professional dispensing fee of \$5.14 per prescription filled.

C. Except as provided in subpart 5, the workers' compensation payer's liability for compensable prescription drugs provided for inpatient use by a large hospital is governed by part 5221.0500, subpart 2, and Minnesota Statutes, section 176.136. The maximum fee for drugs dispensed for use at home, to an inpatient being discharged, is governed by item A or B, or subpart 4, as applicable.

D. Except as provided in subpart 5, the workers' compensation payer's liability for compensable prescription drugs provided by a small hospital is governed by part 5221.0500, subpart 2, and Minnesota Statutes, section 176.136.

Subp. 4. **Maximum fee for electronic transactions.**

A. The maximum fee specified in this item applies only if the requirements of item B or D are met. Except as provided in subpart 5, the workers' compensation payer's liability under items B and D for compensable drugs dispensed for outpatient use by a large hospital pharmacy, a practitioner, or a community/retail pharmacy shall be, on the date the drug was dispensed, the lower of:

(1) the average wholesale price of the drug minus 12 percent, and a professional dispensing fee of \$3.65 per prescription filled;

(2) the maximum allowable cost of the drug according to Minnesota Statutes, section 256B.0625, subdivision 13e, as published by the commissioner of human services in the State Register, and a professional dispensing fee of \$3.65 per prescription filled; or

(3) the pharmacy or practitioner's usual and customary charge for the drug at the time it is dispensed.

B. The maximum fee specified in item A applies if:

(1) the pharmacy or practitioner electronically requests authorization for payment of the drug from the workers' compensation payer, according to the referral certification and authorization standards that apply to retail pharmacies in Code of Federal Regulations, title 45, part 162, subpart M, as amended; and

(2) the workers' compensation payer, electronically and in real time, authorizes payment for the drug according to the referral certification and authorization standards in Code of Federal Regulations, title 45, part 162, subpart M, as amended.

C. If the workers' compensation payer authorizes payment of a drug claim under item B, subitem (2), the payer may not later deny or adjust payment of the claim that was specified in the transaction. If the payer does not authorize payment under item B, subitem (2), but later pays for the drug, the maximum fee specified in subpart 3 applies.

D. If the requirements in item B have not been met, the maximum fee specified in item A also applies if all of the following requirements are met:

(1) the pharmacy or practitioner requests electronic authorization according to the referral certification and authorization standards in Code of Federal Regulations, title 45, part 162, subpart M, from any paying entity, whether or not under chapter 176;

(2) a workers' compensation payer has given the pharmacy or practitioner 30 calendar days' notice that the payer is able to authorize payment for drugs according to the

referral certification and authorization standards in subitem (1) and either of the following has occurred:

(a) the employee notified the pharmacy or practitioner at the time the drug was dispensed that the charges should be submitted to that workers' compensation payer; or

(b) the workers' compensation payer notified the pharmacy before the drug was dispensed that it had accepted liability for the employee's claim;

(3) the pharmacy or practitioner does not electronically request authorization for payment of the drug from the workers' compensation payer according to the referral certification and authorization standards in subitem (1); and

(4) the workers' compensation payer pays for the drug within 30 days after the pharmacy or practitioner submits charges to the payer according to the applicable requirements of part 5221.0700, subpart 2c.

E. The pharmacy or practitioner must transmit reversal transactions electronically for all drugs originally billed electronically to the payer that are not picked up for the employee. Upon receipt of a reversal transaction for a previously approved billing, the payer must be able to cancel the billing if it has not yet been paid or deduct the value of the reversed billing from the next payment to the pharmacy or practitioner if the claim has already been paid. The payer may only deduct the amount of the original payment for the drug. If there is no future payment anticipated, the pharmacy or practitioner must refund the amount to the payer.

Subp. 5. **Other contracts.** Subparts 3 and 4 do not apply where a contract between a pharmacy, practitioner, or network of pharmacies or practitioners, and a workers' compensation payer provides for a different reimbursement amount.

**Statutory Authority:** *MS s 175.171; 176.101; 176.135; 176.1351; 176.136; 176.231; 176.83*

**History:** *18 SR 1472; 25 SR 1142; 30 SR 1053*

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