HUMAN SERVICES CODE - MEDICAL ASSISTANCE PHARMACY SERVICES AND PRESCRIPTION DRUG PRICING STUDY

Act of Nov. 25, 2020, P.L. 1208, No. 120 Cl. 67

Session of 2020
No. 2020-120

HB 941

AN ACT

Amending the act of June 13, 1967 (P.L.31, No.21), entitled "An act to consolidate, editorially revise, and codify the public welfare laws of the Commonwealth," in public assistance, further providing for medical assistance pharmacy services and providing for prescription drug pricing study.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 449 of the act of June 13, 1967 (P.L.31, No.21), known as the Human Services Code, is amended to read:

Section 449. Medical Assistance Pharmacy Services.--**(a)** Any managed care [entity] **organization** under contract to the department, **or an entity with which the managed care organization contracts**, must contract on an equal basis with any pharmacy qualified to participate in the Medical Assistance Program that is willing to comply with the managed care [entity's] **organization's or entity's** pharmacy payment rates and terms and to adhere to quality standards established by the managed care [entity] **organization or entity.**

(b) The following shall apply:

(1) The department may conduct an audit or review of an entity for the purpose of determining compliance with this section.

(2) In the course of an audit or review under paragraph (1), an entity shall provide medical assistance-specific information from a pharmacy contract or agreement to the department.

(c) A contract or agreement between an entity and a pharmacy may not include any of the following:

(1) A confidentiality provision that prohibits the disclosure of information to the department.

(2) Any provision that restricts the disclosure of information to or communication with a managed care organization or the department.

(d) An entity shall maintain records regarding pharmacy services eligible for payment by the Medical Assistance Program and shall disclose the information to the department upon its request.

(e) Information disclosed or produced by an entity to the department under this section shall not be subject to public access under the act of February 14, 2008 (P.L.6, No.3), known as the "Right-to-Know Law."

(f) The following shall apply:

(1) If an entity approves a claim for payment under the Medical Assistance Program, the entity may not retroactively deny or modify the adjudicated claim unless any of the following apply:

(i) The claim was fraudulent.

(ii) The claim was duplicative of a previously paid claim.

(iii) The pharmacy did not dispense the pharmacy service on the claim.

(2) Nothing in this subsection shall be construed to prohibit the recovery of an adjudicated claim that was determined to be an overpayment or underpayment resulting from audit, review or investigation by a Federal or State agency or managed care organization.

(g) A managed care organization or pharmacy benefit manager may not mandate that a medical assistance recipient use a specific pharmacy unless it is consistent with subsection (a) and is preapproved by the department.

(h) A pharmacy benefit manager or pharmacy services administration organization may not do any of the following:

(1) Require that a pharmacist or pharmacy participate in a network managed by the pharmacy benefit manager or pharmacy services administration organization as a condition for the pharmacist or pharmacy to participate in another network managed by the same pharmacy benefit manager or pharmacy services administration organization.

(2) Automatically enroll or disenroll a pharmacist or pharmacy without cause.

(3) Charge or retain a differential between what is billed to a managed care organization as a reimbursement for a pharmacy service and what is paid to pharmacies by the pharmacy benefit manager or pharmacy services administration organization for the pharmacy service.

(4) Charge pharmacy transmission fees unless the amount of the fee is disclosed and applied at the time of claim adjudication.

(i) A managed care organization shall submit its policies and procedures, and any revisions, for development of network pharmacy payment methodology to the department. The department shall review all changes to pharmacy payment methodology prior to implementation.

(j) A managed care organization utilizing a pharmacy benefit manager shall report to the department information related to each outpatient drug encounter, including the following:

(1) The amount paid to the pharmacy benefit manager by the managed care organization.

(2) The amount paid by the pharmacy benefit manager to the pharmacy.

(3) Any differences between the amount paid in paragraph (1) and the amount paid in paragraph (2).

(4) Other information as requested by the department.

(k) A pharmacy shall, upon request by the department, submit the actual acquisition cost of prescriptions dispensed to medical assistance beneficiaries.

(l) As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Adjudicated claim" means a claim that has been processed to payment or denial.

"Entity" means a pharmacy, pharmacy benefit manager, pharmacy services administration organization or other entity that manages, processes or influences the payment for or dispenses pharmacy services to medical assistance recipients in the managed care delivery system.

"Pharmacy benefit management" means any of the following:

(1) The procurement of prescription drugs at a negotiated contracted rate for distribution within this Commonwealth.

(2) The administration or management of prescription drug benefits provided by a managed care organization.

(3) The administration of pharmacy benefits, including any of the following:

(i) Operating a mail-service pharmacy.

(ii) Processing claims.

(iii) Managing a retail pharmacy network.

(iv) Paying claims to pharmacies, including retail, specialty or mail-order pharmacies, for prescription drugs dispensed to medical assistance recipients receiving services in the managed care delivery system via a retail or mail-order pharmacy.

(v) Developing and managing a clinical formulary or preferred drug list, utilization management or quality assurance programs.

(vi) Rebate contracting and administration.

(vii) Managing a patient compliance, therapeutic intervention and generic substitution program.

(viii) Operating a disease management program.

(ix) Setting pharmacy payment pricing and methodologies, including maximum allowable cost and determining single or multiple source drugs.

"Pharmacy benefit manager" means a business that performs pharmacy benefit management. The term does not include a business that holds a valid license from the Insurance Department with accident and health authority to issue a health insurance policy and governed under any of the following:

(1) The act of May 17, 1921 (P.L.682, No.284), known as "The Insurance Company Law of 1921."

(2) The act of December 29, 1972 (P.L.1701, No.364), known as the "Health Maintenance Organization Act."

(3) 40 Pa.C.S. Ch. 61 (relating to hospital plan corporations) or 63 (relating to professional health services plan corporations).

"Pharmacy services administration organization" means an organization comprised of pharmacy members that performs any of the following:

(1) Negotiates or contracts with a managed care organization or pharmacy benefit manager on behalf of its pharmacy members.

(2) Negotiates payment rates, payments or audit terms on behalf of its pharmacy members.

(3) Collects or reconciles payments on behalf of its pharmacy members.

Section 2. The act is amended by adding a section to read:

Section 449.1. Prescription Drug Pricing Study.--(a) The Legislative Budget and Finance Committee shall conduct a study analyzing prescription drug pricing under the medical assistance managed care program. The committee shall do all of the following as it relates to the medical assistance managed care program only:

(1) Provide an overview of the distribution of and payment for pharmaceuticals in the medical assistance managed care program.

(2) Review the reimbursement practices of pharmacy benefit managers to pharmacies within this Commonwealth.

(3) Review the reimbursement practices of managed care organizations to pharmacy benefit managers.

(4) Investigate and compare the reimbursement rates paid by pharmacy benefit managers to independent pharmacies and to chain pharmacies.

(5) Study the best practices and laws adopted by other states to address concerns with pharmacy reimbursement practices of pharmacy benefit managers.

(b) The Legislative Budget and Finance Committee shall review and utilize data from the most recent twelve-month period.

(c) The department shall provide the following data for the medical assistance managed care program to the Legislative Budget and Finance Committee:

(1) The amount paid to a pharmacy provider per claim, including ingredient cost and the amount of any copayment deducted from the payment.

(2) The transmission fees charged by a pharmacy benefit manager to a pharmacy provider.

(3) The amount charged by the pharmacy benefit manager to the medical assistance managed care organization per claim, including all administrative fees and processing charges associated with the claim.

(4) Rebates paid by the pharmacy benefit manager to the managed care organization.

(5) Any other data the Legislative Budget and Finance Committee deems necessary.

(d) Pharmacy benefit managers and medical assistance managed care organizations shall provide the required data under subsection (c) to the department within forty-five days of the effective date of this section for distribution to the Legislative Budget and Finance Committee. The providing of data by the pharmacy benefit managers and medical assistance managed care organizations to the department or by the department to the Legislative Budget and Finance Committee shall not constitute a waiver of any applicable privilege or claim of confidentiality. All data shall be given confidential treatment, shall not be subject to subpoena by a third-party entity and may not be made public or otherwise shared by the department, the Legislative Budget and Finance Committee or any other person except to the extent allowed under this subsection.

(e) All data provided under subsection (b) for purposes of conducting the study shall be in a form that is de-identified of personal health information.

(f) The Legislative Budget and Finance Committee shall publish only aggregate data in the report. Any information disclosed or produced by a pharmacy benefit manager or a medical assistance managed care organization for the purposes of this study shall be confidential and not be subject to the act of February 14, 2008 (P.L.6, No.3), known as the "Right-to-Know Law."

(g) The Legislative Budget and Finance Committee shall submit a report of its findings and recommendations for legislative action to the General Assembly and the department within twelve months of the receipt of the data from the department under subsection (c).

(h) As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Adjudicated claim" shall have the same meaning as the term does in section 449.

"Entity" shall have the same meaning as the term does in section 449.

"Pharmacy benefit management" shall have the same meaning as the term does in section 449.

"Pharmacy benefit manager" shall have the same meaning as the term does in section 449.

"Pharmacy services administration organization" shall have the same meaning as the term does in section 449.

Section 3. The amendment of section 449 of the act shall apply to any agreement or contract relating to pharmacy services

to medical assistance recipients in the managed care delivery system entered into or amended on or after the effective date of this section.

Section 4. This act shall take effect in 60 days.

APPROVED--The 25th day of November, A.D. 2020.

TOM WOLF