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COMMENTS

RULE 128

FAIR AND REASONABLE PHARMACY REIMBURSEMENTS

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I. AUTHORITY

This Rule is issued by the Arkansas Insurance Commissioner (“Commissioner”) under Ark. Code Ann. § 23-92-509(a)(2)(I), § 23-92-509(a)(2)(D) and § 23-92-509(b)(2)(A). Specifically, under the permissive rule authority of these code provisions, the Commissioner is authorized to adopt rules without limitation to implement the Arkansas Pharmacy Benefits Manager Licensure Act (“PBMLA”) for compensation and pharmacy benefits manager network adequacy. In addition, as it applies to health benefit plans, this Rule is issued under the authority of Ark. Code Ann. § 23-61-108(b)(1) that permits the promulgation of rules necessary for the effective regulation of the business of insurance to be in compliance with federal laws, namely Section 2702(c) of the Public Health Service Act and 45 CFR § 156.230 which require that Qualified Health Plans provide sufficiently accessible medical providers that include pharmacies.

II. DEFINITIONS

Unless otherwise defined in this Section, the definitions in the PBMLA shall apply to the provisions in this Rule.

~~A. —“Fair and reasonable cost to dispense” shall mean the Arkansas Insurance Commissioner’s determination of an adequate price or amount for the dispensing of a drug by a pharmacy giving due regard for the cost factors of labor, supplies and other~~

~~administrative costs of a pharmacy associated with the dispensing of a drug to a subscriber of a health benefit plan.~~

A. “Fair and Reasonable Pharmacy Compensation Program” shall mean the Arkansas Insurance Commissioner’s determination of whether a current or proposed health benefit plan’s pharmacy reimbursements result in an adequate network of pharmacies for a health benefit plan.

B. “Subscriber” shall mean an insured, enrollee or certificate holder of a health benefit plan as defined under Ark. Code Ann. § 23-92-503(2).

III. APPLICABILITY

This Rule applies to all health benefit plans as defined in Ark. Code Ann. § 23-92-503(2) and healthcare payors as defined in Ark. Code Ann. § 23-92-503(3). The requirements of this Rule shall not apply to federally regulated health benefit plans restricted from state regulation under federal law or those health benefit plans which are exempted from state regulation under state law.

IV. FAIR AND REASONABLE REIMBURSEMENTS

A. Pursuant to Ark. Code Ann. § 23-92-506(a)(1), the Commissioner may review and approve the compensation program of a pharmacy benefits manager (“PBM”) from a health benefit plan to ensure that the reimbursement for pharmacist services paid to a pharmacist or pharmacy is fair and reasonable to provide an adequate pharmacy benefits manager network for a health benefit plan. The provisions of this Rule are specifically issued related to cost processes, and not plan benefit design, to help ensure the subject of network adequacy or reasonably sustainable network adequacy of pharmacy services for health benefit plans.

B. The Commissioner finds that current pharmacy reimbursement minimums under the PBMLA, or payments within a close range to minimums of National Average Drug Acquisition Cost (“NADAC”), or maximum allowable cost (“MAC”), that do not also include a reasonable cost to dispense to pharmacies may impairimpairs the sustainability of network adequacy for pharmacy services for health benefit plans.

C. To ensure an adequate network of pharmacy services for a health benefit plan, or to ensure a reasonably sustainable adequate network for such services, a health benefit plan, through its pharmacy benefits plan or program, may be required to ~~shall~~ include a fair and reasonable cost to dispense to pharmacies in its administration of drug benefits under its health benefit plan upon and after a review of whether it has a fair and reasonable pharmacy compensation program to ensure an adequate network of pharmacies. ~~A fair and reasonable cost to dispense shall be calculated commiserate with the time, labor, supplies, and other administrative costs associated with the dispensing of the drug by the pharmacy. This cost to dispense shall be uniform or equally applied to all pharmacies servicing the health benefit plan. NFor health benefit plans that are required to pay an additional dispensing cost under this Rule, a health benefit plan may not require a subscriber to pay for the dispensing cost outside of the amounts the health benefit plan has designated as the co-pay, co-insurance and deductible. o health insurer, and no pharmacy benefits manager (“PBM”) administering drug benefits for health benefit plans shall recoup or recover any increased costs to dispense from a subscriber at the point of sale through increased cost-sharing requirement ratios or percentages (“co-insurance, co-payment, or deductibles”) on the health benefits plan member.~~ Every health benefit plan or healthcare payor ~~insurer~~ shall file with the Commissioner, beginning on November 30, 2024, and no later than by February 17, 2025, by January 1, 2025, a written report describing each healthcare payor’s pharmacy compensation data as required by Bulletin # 18-2024 by AID. calculation amount, and methodology for such calculation, of the cost to dispense as required by this Rule. ~~This requirement shall apply to plan year 2025 and thereafter on such dates March 1 for each succeeding plan year as mandated by the AID implementation Bulletin # 18-2024. Upon receipt of the data as required by AID Bulletin# 18-2024, the Commissioner is authorized to require an additional dispensing cost if the health benefit plan does not already provide a fair and reasonable pharmacy compensation program to ensure an adequate network of pharmacies.~~ The Commissioner shall be authorized to review, approve or deny such dispensing cost requirement, ~~to dispense calculation,~~ in consultation with the actuary for the Arkansas Insurance Department (“AID”). The Commissioner shall make his or her decision to approve or deny such cost calculation within twenty (20) working days of receipt of such report from a healthcare payor and notify the submitting healthcare payor of his or her decision in writing. The Commissioner may extend such time periods for his or her decision in the event that the Commissioner needs additional data from the healthcare payor. The Commissioner shall issue a bulletin with the promulgation of this Rule more specifically addressing the format, procedures and information requirements required for such submissions as required under this Section of this Rule. Bulletin (18-2024) is hereby incorporated as

part of this Rule. This Bulletin shall not be amended without filing such amendments as an amended promulgation of this Rule.

~~E.—The Commissioner requests that the health benefit plans and healthcare payors strive to reduce any additional costs, associated with the costs to dispense as required by this Rule, by applying all unused brand name rebates to such costs, remaining after compliance with Act 333 of 2023 under the Healthcare Insurer Share the Savings Act, codified at Ark. Code Ann. § 23-79-2501 et seq., and the Pharmacy Benefits Manager Share the Savings Act, codified at Ark. Code Ann. § 23-92-704 et seq.~~

D. Confidentiality of Data Required By AID Bulletin. Pursuant to Ark. Code Ann. § 23-92-506(a)(2), all data acquired by AID for review of a pharmacy compensation program under Rule 128 or this Bulletin shall be considered proprietary and confidential under Ark. Code Ann. § 23-61-107(a)(4) and § 23-61-207; and shall not be subject to the Arkansas Freedom of Information Act of 1967, § 25-19-101 et seq. However, the average dispensing fee per healthcare payor that is approved will be published annually.

E. Upon its adoption by the Arkansas Legislative Council, and legal effective date, this permanent rule shall replace any earlier issued emergency rule .

F. For health plan calendar year 2025, for health benefit plans required to pay an additional dispensing cost under this rule, the requirement shall apply only on a going forward or prospective basis to drug reimbursements by the plan that calendar year, thirty (30) days from the date of the written decision requiring the dispensing cost from the Insurance Commissioner. For health plan calendar years 2026 and thereafter, such dispensing costs if required, shall apply on 1-1 of each year for which the review is submitted.

V. VIOLATIONS

Violations of any provision of this Rule shall be subject to the fines or penalties under Ark. Code Ann. § 23-92-508.

VI. EFFECTIVE DATE

This Rule is effective after review and approval by the Arkansas Legislative Council, ten (10) days after filing of the approved Rule with the Arkansas Secretary of State.

ALAN MCCLAIN
INSURANCE COMMISSIONER

DATE