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An Act Regarding Maximum Allowable Cost Pricing Lists Used by Pharmacy Benefit Managers

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 24-A MRSA §4317, sub-§12 is enacted to read:

12. Maximum allowable cost. This subsection governs the maximum allowable cost for a prescription drug as determined by a pharmacy benefits manager.

A. As used in this subsection, unless the context otherwise indicates, the following terms have the following meanings.

(1) "Maximum allowable cost" means the maximum amount that a pharmacy benefits manager pays toward the cost of a prescription drug.

(2) "Nationally available" means available to all pharmacies in this State for purchase, without limitation, from regional or national wholesalers and not obsolete or temporarily available.

(3) "Therapeutically equivalent drug substitute" means a prescription drug identified as therapeutically or pharmaceutically equivalent to another prescription drug as evidenced by an "A" code in the most recent version of the United States Food and Drug Administration's "Approved Drug Products with Therapeutic Equivalence Evaluations," also known as "the Orange Book," or an equivalent rating from a successor publication.

B. A pharmacy benefits manager may set a maximum allowable cost for a prescription drug, or allow a prescription drug to continue on a maximum allowable cost list, only if that prescription drug is nationally available and has 3 or more nationally available therapeutically equivalent drug substitutes with a significant cost difference.

C. A pharmacy benefits manager shall remove or modify a maximum allowable cost for a prescription drug as necessary for the cost of the prescription drug to remain consistent with changes to such costs in the national marketplace for prescription drugs. A removal or modification made under this paragraph must be made in a timely fashion.

D. A pharmacy benefits manager shall disclose to a pharmacy for which the pharmacy benefits manager processes claims, makes payment of claims or procures drugs:

(1) By January 1st, the basis of the methods and the sources used to establish the maximum allowable costs used by the pharmacy benefits manager;

(2) Promptly, by written notification, any change made to a maximum allowable cost; and

(3) At least once every 7 days, the maximum allowable costs used by the pharmacy benefits manager.

E. A pharmacy benefits manager shall disclose to a carrier with which the pharmacy benefits manager has entered into a contract:

(1) By January 1st, the basis of the methods and the sources used to establish the maximum allowable costs used by the pharmacy benefits manager;

(2) As soon as practicable, any change made to a maximum allowable cost;

(3) The maximum allowable costs for prescription drugs dispensed at a retail pharmacy if a similar maximum allowable cost list is not used for prescription drugs dispensed by mail, not later than 21 business days after these costs are set; and

(4) Whether the pharmacy benefits manager bills the carrier for a prescription drug an amount consistent with the maximum allowable cost for that drug used for reimbursing a pharmacy and, if the pharmacy benefits manager does not bill and reimburse consistent amounts, the difference between the amount billed and the amount reimbursed.

F. A pharmacy benefits manager shall provide a reasonable administrative appeal procedure, including a right to appeal that is limited to 60 days following the initial claim, to allow pharmacies to challenge maximum allowable costs for a specified drug if one of the following conditions is met:

(1) The prescription drug does not meet the requirements of paragraph B; and

(2) The maximum allowable cost is below the pharmacy's acquisition cost.

G. The pharmacy benefits manager shall respond to, investigate and resolve an appeal under paragraph F within 7 days after the receipt of the appeal. The pharmacy benefits manager shall respond to an appeal as follows:

(1) If the appeal is upheld, the pharmacy benefits manager shall make the appropriate adjustment in the maximum allowable cost, permit the challenging pharmacy or pharmacist to reverse and rebill the claim in question retroactive to the date of the initial claim adjudication and make the adjustment for each similarly situated pharmacy in the State that is within the network within 5 business days; or

(2) If the appeal is denied, the pharmacy benefits manager shall provide the challenging pharmacy or pharmacist the national drug code from national or regional wholesalers operating in the State of a comparable prescription drug that may be purchased at or below the maximum allowable cost.

H. The superintendent may enforce this section under sections 220 and 223 and other provisions of this Title. A person who violates this section is subject to a civil penalty of not less than \$1,000 per violation.

SUMMARY

This bill establishes requirements for maximum allowable cost pricing lists used by pharmacy benefits managers and requires pharmacy benefits managers to make disclosures regarding that pricing and the methods used to establish that pricing to plan sponsors. It establishes an appeal process for pharmacies for disputes relating to maximum allowable cost pricing. The bill also provides for financial penalties for violations.