

**§4349. Oversight and contracting responsibilities**

**1. Compliance.** A carrier is responsible for monitoring all activities carried out by the carrier, or all activities carried out on behalf of the carrier by a pharmacy benefits manager if the carrier contracts with a pharmacy benefits manager, related to a carrier's prescription drug benefits and for ensuring that all requirements of this chapter are met.

[PL 2019, c. 469, §8 (NEW); PL 2019, c. 469, §9 (AFF).]

**2. Fiduciary duty.** A carrier that contracts with a pharmacy benefits manager to perform any activities related to the carrier's prescription drug benefits is responsible for ensuring that, under the contract, the pharmacy benefits manager acts as the carrier's agent and owes a fiduciary duty to the carrier in the pharmacy benefits manager's management of activities related to the carrier's prescription drug benefits.

[PL 2019, c. 469, §8 (NEW); PL 2019, c. 469, §9 (AFF).]

**3. Contract requirements.** A carrier may not enter into a contract or agreement or allow a pharmacy benefits manager or any person acting on the carrier's behalf to enter into a contract or agreement that prohibits a pharmacy provider from:

A. Providing a covered person with the option of paying the pharmacy provider's cash price for the purchase of a prescription drug and not filing a claim with the covered person's carrier if the cash price is less than the covered person's cost-sharing amount; or [PL 2019, c. 469, §8 (NEW); PL 2019, c. 469, §9 (AFF).]

B. Providing information to a state or federal agency, law enforcement agency or the superintendent when such information is required by law. [PL 2019, c. 469, §8 (NEW); PL 2019, c. 469, §9 (AFF).]

[PL 2019, c. 469, §8 (NEW); PL 2019, c. 469, §9 (AFF).]

**4. Excess payments at point of sale prohibited.** A carrier or pharmacy benefits manager may not require a covered person to make a payment at the point of sale for a covered prescription drug in an amount greater than the least of:

A. The applicable cost-sharing amount for the prescription drug; [PL 2019, c. 469, §8 (NEW); PL 2019, c. 469, §9 (AFF).]

B. The amount a covered person would pay for the prescription drug if the covered person purchased the prescription drug without using a health plan or any other source of prescription drug benefits or discounts; and [PL 2019, c. 469, §8 (NEW); PL 2019, c. 469, §9 (AFF).]

C. The total amount the pharmacy will be reimbursed for the prescription drug from the pharmacy benefits manager or carrier, including the cost-sharing amount paid by a covered person. [PL 2019, c. 469, §8 (NEW); PL 2019, c. 469, §9 (AFF).]

[PL 2019, c. 469, §8 (NEW); PL 2019, c. 469, §9 (AFF).]

**5. Adequate network.** A carrier shall provide a reasonably adequate retail pharmacy network for the provision of prescription drugs for its covered persons. A mail order pharmacy may not be included in determining the adequacy of a retail pharmacy network. The superintendent may adopt rules as necessary to carry out the purposes of this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[PL 2019, c. 469, §8 (NEW); PL 2019, c. 469, §9 (AFF).]

**6. Cost-sharing amounts paid on behalf of covered person.** The requirements of this subsection apply to the calculation of a covered person's contribution to any applicable cost-sharing or other out-of-pocket expense under a covered prescription drug benefit.

A. When calculating a covered person's contribution to any applicable cost-sharing or other out-of-pocket expense under a covered prescription drug benefit, a carrier or pharmacy benefits

manager shall give credit for any waiver or discount of, or payment made by a 3rd party for, the amount of, or any portion of the amount of, the applicable cost-sharing or other out-of-pocket expense for the covered prescription drug that is either:

- (1) Without a generic equivalent; or
- (2) With a generic equivalent when the covered person has obtained access to the covered prescription drug through prior authorization, a step therapy override exception or other exception or appeal process. [PL 2021, c. 744, §1 (NEW).]

B. A 3rd party that pays as financial assistance any amount, or portion of the amount, of any applicable cost-sharing or other out-of-pocket expense on behalf of a covered person for a covered prescription drug:

- (1) Shall notify the covered person prior to or within 7 days of the acceptance of the financial assistance of the total amount of assistance available and the duration for which it is available; and
- (2) May not condition the assistance on enrollment in a specific health plan or type of health plan, except as permitted under federal law. [PL 2021, c. 744, §1 (NEW).]

C. If under federal law, with respect to a high-deductible health plan offered for use with a health savings account in accordance with the federal Internal Revenue Code, the application of paragraph A would result in ineligibility for a health savings account, this subsection applies only with respect to the deductible of such a plan after the covered person has satisfied the minimum deductible under the federal Internal Revenue Code, Section 223, except for items or services that are determined to be preventive care pursuant to the federal Internal Revenue Code, Section 223(c)(2)(C), in which case the requirements of paragraph A apply regardless of whether the minimum deductible under the federal Internal Revenue Code, Section 223 has been satisfied. [PL 2021, c. 744, §1 (NEW).]

[PL 2021, c. 744, §1 (NEW).]

#### SECTION HISTORY

PL 2019, c. 469, §8 (NEW). PL 2019, c. 469, §9 (AFF). PL 2021, c. 744, §1 (AMD).

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