

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16

17
18
19

H.97

Introduced by Representatives Till of Jericho, Berry of Manchester, Christie of
Hartford, Clarkson of Woodstock, Cole of Burlington, Dakin of
Chester, French of Randolph, Masland of Thetford,
McCullough of Williston, Nuovo of Middlebury, Russell of
Rutland City, Savage of Swanton, Sullivan of Burlington, and
Troiano of Stannard

Referred to Committee on

Date:

Subject: Health; prescription drugs; pharmacies; pharmacy benefit managers;
maximum allowable cost

Statement of purpose of bill as introduced: This bill proposes to establish
specific standards by which pharmacy benefit managers would set the
maximum allowable cost for prescription drug reimbursement. It would also
require health insurers and pharmacy benefit managers to permit plan
beneficiaries to fill prescriptions at the pharmacy of their choice.

An act relating to the maximum allowable cost for prescription drug
reimbursement

It is hereby enacted by the General Assembly of the State of Vermont:

1 Sec. 1. 18 V.S.A. chapter 79 is amended to read:

2 CHAPTER 79. PHARMACY AUDITS BENEFIT MANAGERS

3 Subchapter 1. General

4 § 3801. DEFINITIONS

5 As used in this ~~subchapter~~ chapter:

6 (1)(A) “Health insurer” shall have the same meaning as in section 9402
7 of this title and shall include:

8 (i) a health insurance company, a nonprofit hospital and medical
9 service corporation, and health maintenance organizations;

10 (ii) an employer, a labor union, or another group of persons
11 organized in Vermont that provides a health plan to beneficiaries who are
12 employed or reside in Vermont; and

13 (iii) except as otherwise provided in section 3805 of this title, the
14 State of Vermont and any agent or instrumentality of the State that offers,
15 administers, or provides financial support to State government.

16 (B) The term “health insurer” shall not include Medicaid or any other
17 Vermont public health care assistance program.

18 (2) “Health plan” means a health benefit plan offered, administered, or
19 issued by a health insurer doing business in Vermont.

1 (3) “Maximum allowable cost” means the per unit drug product
2 reimbursement amount, excluding dispensing fees, for a group of
3 therapeutically and pharmaceutically equivalent multisource generic drugs.

4 (4) “Pharmacy” means any individual or entity licensed or registered
5 under 26 V.S.A. chapter 36.

6 ~~(4)~~(5) “Pharmacy benefit management” means an arrangement for the
7 procurement of prescription drugs at a negotiated rate for dispensation within
8 this State to beneficiaries, the administration or management of prescription
9 drug benefits provided by a health plan for the benefit of beneficiaries, or any
10 of the following services provided with regard to the administration of
11 pharmacy benefits:

12 (A) mail service pharmacy;

13 (B) claims processing, retail network management, and payment of
14 claims to pharmacies for prescription drugs dispensed to beneficiaries;

15 (C) clinical formulary development and management services;

16 (D) rebate contracting and administration;

17 (E) certain patient compliance, therapeutic intervention, and generic
18 substitution programs; and

19 (F) disease or chronic care management programs.

20 ~~(5)~~(6) “Pharmacy benefit manager” means an entity that performs
21 pharmacy benefit management. The term includes a person or entity in a

1 contractual or employment relationship with an entity performing pharmacy
2 benefit management for a health plan.

3 (7) “Price index” means any variable, including average wholesale
4 price, wholesale acquisition cost, or average manufacturer’s price, used by a
5 pharmacy benefit manager in determining drug product reimbursement.

6 ~~(6)~~(8) “Responsible party” means the entity, including a health insurer
7 or pharmacy benefit manager, responsible for payment of claims for health
8 care services other than:

9 (A) the individual to whom the health care services were rendered;

10 (B) that individual’s guardian or legal representative; or

11 (C) the ~~agency of human services~~ Agency of Human Services, its
12 agents, and contractors.

13 Subchapter 2. Pharmacy Audits

14 § 3802. PHARMACY RIGHTS DURING AN AUDIT

15 * * *

16 Subchapter 3. Maximum Allowable Cost

17 § 3811. CONTRACT PROVISIONS

18 Each contract between a pharmacy benefit manager and a contracted
19 pharmacy shall include:

1 (1) the sources used by the pharmacy benefit manager to calculate the
2 drug product reimbursement rate paid for all covered drugs available under the
3 pharmacy health benefit plan administered by the pharmacy benefit manager;

4 (2) the price index methodology used to establish the drug product
5 reimbursement rate; and

6 (3) the process to appeal, investigate, and resolve disputes regarding the
7 drug product reimbursement rate.

8 § 3812. MAXIMUM ALLOWABLE COST

9 For each drug for which a pharmacy benefit manager establishes a
10 maximum allowable cost in order to determine the reimbursement rate, the
11 pharmacy benefit manager shall do all of the following:

12 (1) Ensure that the drug is available nationwide from at least three
13 manufacturers of Food and Drug Administration Orange Book “AB” rated
14 equivalent multisource drugs.

15 (2) Ensure that maximum allowable cost applies only when a drug is
16 available for purchase without limitations by all pharmacists in the State from
17 licensed national or regional wholesalers, and that it will not apply if the drug
18 is unavailable for a period of 14 calendar days or more.

19 (3) Make available, in a format that is readily accessible and
20 understandable by a pharmacist, a list of the drugs subject to maximum

1 allowable cost, the actual maximum allowable cost for each drug, and the
2 source used to determine the maximum allowable cost.

3 (4) Update the maximum allowable cost list at least once every seven
4 calendar days.

5 (5) Establish or maintain a reasonable process for an administrative
6 appeals procedure to allow a dispensing pharmacy provider to contest a listed
7 maximum allowable cost as:

8 (A) not meeting the requirements of this section; or

9 (B) being below the cost at which the pharmacy obtained or may
10 obtain the drug.

11 (6)(A) Respond in writing to any appealing pharmacy provider as to the
12 merits of the dispute within seven calendar days after receipt of an appeal. If,
13 upon appeal, the pharmacy benefit manager finds in favor of the appealing
14 pharmacy, the pharmacy benefit manager shall adjust the maximum allowable
15 cost to no less than the actual acquisition cost retroactive to the dispensing date
16 of the original claim and make adjustments to all similar claims in all
17 pharmacies in the pharmacy benefit manager's network. If, upon appeal, the
18 pharmacy benefit manager finds against the appealing pharmacy, the pharmacy
19 benefit manager shall provide the appealing pharmacy with the National Drug
20 Code of an alternative product on the maximum allowable cost list that is
21 available for purchase without limitations.

1 (B) If an appealing pharmacy can prove that its actual acquisition
2 cost exceeded the pharmacy benefit manager's maximum allowable cost, the
3 pharmacy benefit manager shall adjust the maximum allowable cost to no less
4 than the actual acquisition cost retroactive to the dispensing date of the original
5 claim. If no maximum allowable cost is available for a drug, the pharmacy
6 benefit manager shall reimburse the pharmacy no less than the proven actual
7 acquisition cost.

8 Subchapter 4. Benefit Administration

9 § 3821. CHOICE OF PHARMACY

10 (a) A health insurer or pharmacy benefit manager shall permit a plan
11 beneficiary to fill a prescription at the pharmacy of his or her choice and shall
12 not impose differential cost-sharing requirements based on the choice of
13 pharmacy or otherwise promote the use of one pharmacy over another.

14 (b) A health insurer or pharmacy benefit manager shall not condition the
15 reimbursement for dispensing prescription drugs in any way based on whether
16 a pharmacy or pharmacist participates in the health insurer's or pharmacy
17 benefit manager's network or other contractual agreement.

18 Sec. 2. EFFECTIVE DATE

19 This act shall take effect on passage.