AHIP Proposed Amendments

NCOIL Pharmacy Benefits Manager Licensure and Regulation Model Act

Section 1. Title

No changes

Section 2. Purpose

No changes

Section 3. Definitions

Added the following definitions to clarify new terminology in amendments:

Health care facility, health care service contractor, manufacture, manufacturer, new prescription drug, patient assistance program, prescription drug, and price

Amended the following definitions:

Subsection (i) – renamed to "pharmacy benefit management" and amended to specify the services that constitute pharmacy benefits management.

Subsection (p) – amended to reflect terminology changes to subsection (i) and to clarify that the definition of "pharmacy benefits manager" excludes health benefit plans and entities providing only services for the Medicaid program.

Subsection (s) – amended to better capture the activities of pharmacy services administrative organizations.

Deleted the following definitions that are no longer needed after amendments:

Independent pharmacy, Pharmacy acquisition cost, pharmacy benefits manager affiliate, and rebate

Section 4. License to do business – Annual statement – Assessment

Deleted proposed licensure and registration section.

Replaced proposed licensure and registration section with legislation recently enacted in Tennessee that was supported by a broad group of stakeholders.

The amended language provides greater guidance to regulators and PBMs by specifying the requirements and cost for licensure, as well as requiring demonstration of financial responsibility.

Section 5 (Proposed). Pharmacy Benefits Manager Network Adequacy

Deleted proposed network adequacy section as duplicative, unnecessary, and anti-competitive in light of existing network adequacy requirements in many state laws.

Section 5. Contracting Requirements – Prohibited Practices

Subsection (a) (NCOIL) – Deleted proposed language that would give regulators broad authority to review and regulate payment rates for prescription drugs based on subjective and vague standards such as "fair and reasonable" and "adequate."

Subsection (a) – Clarifies that contracts between PBMs and pharmacists, pharmacies or PSAOs must clearly outline terms and conditions that are mutually agreed to by all parties.

Subsection (b)(2) – Permits the use of specific fees in contracts so long as they are mutually agreed to by both parties and disclosed in the contract.

Subsection (c) – Requires contracts between PBMs and pharmacies or PSAOs to outline the terms for auditing claims pursuant to each state's law.

Subsection (b)(4) (NCOIL) – Deletes language regarding affiliate pharmacies.

Subsection (c) (NCOIL) – Deletes language for retroactive claims denials to align with amendments that incorporate existing state pharmacy audit laws to provide greater clarity and uniformity. Almost 40 states have already enacted laws addressing audit and payment recoupment.

Section 6. Gag Clauses Prohibited

Subsection (a) (NCOIL) – Eliminates proposed "gag clause" language and inserts nationally agreed-upon language for "gag clauses" that has broad stakeholder support and has been discussed in many states. Eighteen states have enacted "gag clause" legislation this year, and 40 have already introduced such measures for 2018. The majority of these enacted bills contain the nationally-agreed upon language.

Subsection (b) – Addresses practices that are intended to steer patients to higher cost drugs by clarifying that, when referring to lower cost alternative drugs, prices do not include copay assistance programs, coupons, vouchers, or other cost-sharing reductions. Copay coupons are banned in public programs as they are seen as a "kick-back" and in violation of Stark Anti-Kickback laws at the federal level.

Subsection (c) (NCOIL) – Deletes language regarding price discussions between pharmacists and patients, which is no longer necessary due to amendments to subsection (a).

Subsection (d) (NCOIL) – Deletes language regarding disclosure of certain information.

Section 7. Enforcement

Maintains enforcement authority of the Insurance Commissioner but eliminates language regarding examinations and audits, which is unnecessary due to the broad enforcement and rulemaking authority provided to the Insurance Commissioner.

Section 8. Rules

Subsection (a) – Eliminates list of permissible rulemaking areas in favor of general rulemaking authority.

Section 9. Applicability

Subsection (a) – Eliminates unnecessary language regarding amendments or extensions.

Subsection (b) (NCOIL) – Eliminates redundant language requiring compliance.

Subsection (b) (amended) – In light of recent court rulings, clarifies that the model does not apply to Medicare Part D.

Subsection (c) – Supports the NCOIL proposed definition of 'health benefit plan' by clarifying that the model does not apply to HIPAA excepted benefits such as supplemental health insurance products (i.e. disability income insurance, etc.).

Section 10. Reporting Requirements

Subsection (a) – Eliminates the mandatory elements for annual report to provide greater flexibility in defining the elements contained in the annual report.

Subsection (a) – Maintains annual compliance report requirement but eliminates language that could require more frequent reports.

Subsection (b) – Proposes new drug cost transparency requirements enacted in Oregon. We believe that Insurance Commissioners should have more information from the drug supply chain on what is impacting pharmacy costs.

Section 11. Maximum Allowable Cost Lists

Eliminates proposed Arkansas language due to recent court rulings that put the legality and constitutionality of those provisions in question.

Replaces Arkansas language with recently enacted Florida legislation that ensures timely updates of maximum allowable cost lists.

Section 12. Severability Clause

No changes

Section 13. Effective Date

No changes