

DCBS' PBM Recommendations Will Raise Healthcare Costs

In the 2016 session, the legislature adopted a Budget Note that required DCBS to examine enforcement of the statutes related to PBMs and maximum allowable cost (MAC) reimbursements to pharmacies, and make recommendations on enforcement. The final DCBS Report and Recommendations reflect a different goal—to expand the reach of the PBM and MAC reimbursement statutes and change the underlying state policy. Unfortunately, these suggested changes impact the underlying state policy in a way that will increase costs for payers—costs which are ultimately borne by health care consumers and taxpayers.

Authorizing Batch Appeals & Allowing Representatives to File Appeals:

Allowing batch appeals encourages pharmacies or PSAOs to file appeals on potentially every reimbursement, even those not covered by the statute. Given the number of pharmacy claims that PBMs process, one organization could singlehandedly bring business to a halt by filing frivolous batch appeals that must be individually investigated, even when the pharmacy knows that those claims aren't covered by the statute. By creating an easy pathway for multiple appeals, without creating a penalty for filing frivolous appeals or appeals not covered under the state law, these recommended rules encourage wasteful practices by pharmacies.

Significant Additional Costs:

DCBS proposes to require PBMs to adjust reimbursements for “all similarly situated pharmacies” when a MAC reimbursement appeal is upheld for a single pharmacy, and do so from the date of initial adjudication. These are new substantive requirements that the statute does not require.

Proposals Provide Implicit Support for Pharmacy Guaranteed Profits:

Invoice-based reimbursement in the pharmacy context amounts to guaranteed profit because of secret off-invoice discounts. This policy also ignores a primary reason the MAC reimbursement methodology was created—to encourage efficient purchasing practices by pharmacies. Invoice-based reimbursement results in a race to the highest price. No other business enjoys the luxury of guaranteed reimbursements, or guaranteed profitability.

Expanding the Statute Will Drive Prices Higher:

Requiring the PBM to provide the appealing pharmacy with information about where the drug was generally available for purchase at a specified price is impossible to comply with because the PBM does not know this information. Additionally, by allowing an entity that does not hold the contract with the PBM, DCBS is attempting to force PBMs to disclose confidential contract price terms, which could lead to collusion in the marketplace.

PBMs are the only entities in the pharmacy supply chain that are focused not only on quality, service, and health outcomes, but on cost control. The proposals DCBS has outlined make significant changes to state policy on MAC reimbursement, restricting PBM tools from working to reduce costs.