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DEPARTMENT

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BULLETIN NO. 11-2021

TO: PHARMACY BENEFIT MANAGERS, HEALTH INSURERS, HEALTH MAINTENANCE ORGANIZATIONS, HOSPITAL PUBLIC SERVICE CORPORATIONS, HEALTHCARE PAYERS, AND OTHER INTERESTED PARTIES

FROM: ARKANSAS INSURANCE DEPARTMENT

SUBJECT: MAXIMUM ALLOWABLE COST APPEALS TO THE ARKANSAS INSURANCE DEPARTMENT ("AID")

The Arkansas Insurance Commissioner ("Commissioner") issues this Bulletin to all Arkansas licensed pharmacy benefit managers ("PBMs") regarding complaints, appeals, or inquiries made to AID by pharmacies, following a pharmacy's maximum allowable cost ("MAC") appeal denial by a PBM.

A recent review of post MAC appeal complaints by several pharmacies to AID reveals that, in many cases, a pharmacy has filed a complaint with AID following a denial of a MAC appeal, and the sole basis for the denial, or justification by the PBM, in the record for the denial and payment below acquisition cost is that the pharmacy was paid at its generic effective rate ("GER") rate, or contracted rate, with the PBM. Following the appeal denial, the complaint or inquiry is then made by the pharmacy to AID against the PBM. Ultimately, after a complaint is filed with the regulator, the PBM agrees with AID to make the necessary reimbursement adjustments consistent with the MAC law to the pharmacy's acquisition cost ("PAC"), for the drugs challenged in the MAC appeal. AID has processed these complaints following this pattern and required PBMs to make these adjustments to the pharmacy's inventory cost, without fines or penalties, for PAC adjustments which should have been made during the MAC appeal itself.

The purpose of this Bulletin is to advise and provide notice to PBMs that AID will no longer simply resolve the complaint by requiring the adjustments to PAC to occur following the appeal and processing by AID without a fine or penalty, if the denial by the PBM in the MAC appeal is solely due to contracted rate agreements.

Under the MAC law (Ark. Code Ann. §§ 17-92-507 et seq.), a pharmacy is entitled to appeal its MAC reimbursement to achieve or obtain reimbursement at least to the level of its PAC. The law makes no exception to permit below acquisition cost reimbursement because of the GER rate. The

fact that the pharmacy and PBM agreed to a GER rate, which supposedly governs the MAC reimbursement, is not germane to override the legal requirement in the MAC law requiring the pharmacy to at least be reimbursed its acquisition cost in the MAC appeal, regardless of GER. See Ark. Code Ann. § 17-92-507(c)(4).

AID takes the position that the PBM is not providing a reasonable administrative appeal under Ark. Code Ann. § 17-92-507(c) if the MAC reimbursement is below the pharmacy's PAC, and a MAC appeal denial is solely due to GER or contracted rate responses. PBMs should correct their MAC system appeals now to recognize and adjust their reimbursement in MAC to the pharmacy's inventory cost to avoid having the pharmacy and AID later process what is essentially an unnecessary complaint which should have been corrected during the MAC appeal.

PBMs are henceforth on notice, following the date of this Bulletin, that AID will now seek fines or penalties, if a pharmacy has filed a complaint with AID based on below PAC reimbursement, and the MAC denial is stated by the PBM to be due to GER rate or contracted rate differences. Pursuant to Ark. Code Ann. § 17-92-507(g)(1), a violation of the Maximum Allowable Cost law, shall be considered a prohibited practice under the Arkansas Insurance Department's Trade Practices Act, Ark. Code Ann. § 23-66-201 et seq.

The Commissioner presumes that, in the above cases, the pharmacy, or its pharmacy services administrative organization ("PSAO"), has submitted to the PBM in the MAC appeal, the pharmacy's inventory or acquisition costs in the MAC appeal, or is otherwise submitting all of the necessary information of its billing invoice for the PBM to make the PAC adjustment. PAC is defined under Ark. Code Ann. § 17-92-507 to mean "the amount that a pharmaceutical wholesaler charges for a pharmaceutical product *as listed on the pharmacy's billing invoice.*" (Emphasis added.) The law does not permit or allow the PBM to request additional agreements or discount information as a basis for denial of the MAC appeal. AID will take the position that, if the PBM denies the MAC appeal because additional agreements are not submitted in the appeal, beyond the billing invoice, the PBM is not providing a reasonable administrative appeal in violation of Ark. Code Ann. § 17-92-507(c).



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DATE