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June 28, 2002

The Honorable Judy Robson, Co-Chairperson
Joint Committee for Review of Administrative Rules
Room 15 South, State Capitol
Madison, Wisconsin

The Honorable Glenn Grothman, Co-Chairperson
Joint Committee for Review of Administrative Rules
Room 15 North, State Capitol
Madison, Wisconsin

Dear Senator Robson and Representative Grothman:

This is notification that on July 1st the Department will publish an emergency rulemaking order to amend chs. HFS 152, 153 and 154, its rules relating to administration of the Wisconsin Chronic Disease Program. A copy of the emergency order is attached to this letter.

The amended rules are being published by emergency order to allow the Department to immediately increase the drug copayment amounts from the \$1 specified in the existing rules to \$5 for generic drugs and \$10 for brand name drugs. As stated in the rulemaking order's "Finding of Emergency," these new copayment amounts resemble those used by commercial health insurers and were determined by the Department in consultation with the Chronic Renal Disease Program Advisory Committee. While the Department is currently in the process of promulgating these amendments to the permanent rules, the Department must implement these changes immediately to preserve the public welfare. Therefore, the Department is issuing these identical amendments as an emergency order.

If you have any questions about this emergency rulemaking order, you may contact Randy McElhose of the Division of Health Care Financing at 608-267-7127.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Larry Hartzke'.

Larry Hartzke
Administrative Rules Manager

Attachment

ORDER OF THE
DEPARTMENT OF HEALTH AND FAMILY SERVICES
AMENDING RULES

FINDING OF EMERGENCY

The Department of Health and Family Services finds that an emergency exists and that the rules are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

The Wisconsin Chronic Disease Program (WCDP) is the payer of last resort for working poor persons with medical problems relating to chronic renal disease, cystic fibrosis or hemophilia. The Department administers the WCDP. The WCDP reimburses beneficiaries' dialysis and transplant services, home supplies, lab and x-ray services and kidney donor services for chronic renal disease recipients. Cystic fibrosis recipients are eligible for reimbursement of hospital services, certain physician services, lab and x-ray services, prescription medication and some home supplies. Recipients with hemophilia receive reimbursement for blood derivatives and supplies necessary for home infusion. The program's annual \$5 million budget is entirely state funded. About 90% of the budget (\$4.5 million) funds the care of chronic renal disease recipients, of which 60% (\$2.7 million) is for drugs. Drug costs are increasing at a rate of at least 10% per year. The Wisconsin 2001-03 biennial budget does not provide for increases of this magnitude. Consequently, the WCDP will likely have an estimated shortfall of between \$700,000 and \$900,000 in the 2001-03 biennium.

To mitigate the projected budgetary shortfall, the Department will be emphasizing generic drugs and implement an expanded drug rebate program. Both of these efforts can be accomplished through Department policy changes. In addition, WCDP drug copayment amounts must be increased. The Department's administrative rules governing WCDP currently limit the drug copayment amounts to the \$1 used by the Wisconsin Medicaid Program. To further mitigate the effect of increased drug costs on the WCDP program, the Department is also increasing the WCDP prescription drug copayment amounts to \$5 for generic drugs and \$10 for brand name drugs. These new copayment amounts resemble those used by commercial health insurers and were determined by the Department in consultation with the Chronic Renal Disease Program Advisory Committee. While the Department is currently in the process of promulgating these amendments to the permanent rules, the Department must implement these changes immediately to preserve the public welfare. Therefore, the Department is issuing these identical amendments as an emergency order.

The proposed rules potentially affect approximately 6,500 individuals with chronic renal disease, 200 individuals with hemophilia and 150 individuals with cystic fibrosis. Approximately 41% of persons enrolled in the program received state-funded benefits in 2000-01. The rest either incurred no expenses that were covered under these programs, or their expenses did not exceed the required deductibles.

ORDER

Pursuant to the authority vested in the Department of Health and Family Services by ss. 49.68 (2), 49.683 (1), 49.685 (6), 227.11 (2) (a) and 227.24 (1), Stats., the Department of Health and Family Services hereby creates rules interpreting ss. 49.683 and 49.687, Stats.

SECTION 1. HFS 152.065 (6) is amended to read:

HFS 152.065 (6) PATIENT COPAYMENT. When a pharmacy directly bills the chronic renal disease program for a prescription received by an ESRD patient, the patient is responsible for a \$5 copayment amount for each generic drug and a \$10 copayment amount for each brand name drug. ~~the same copayment amount a medical assistance recipient incurs for a similar prescription pursuant to s. 49.45 (18), Stats. However, the partial medical assistance copayment exemptions in s. 49.45 (18), Stats., do not apply to an ESRD patient.~~

SECTION 2. HFS 153.07 (4) is amended to read:

HFS 153.07 (4) PARTICIPANT COPAYMENT. When a pharmacy directly bills the hemophilia home care program for a prescription received by a program participant, the participant is responsible for a \$5 copayment amount for each generic drug and a \$10 copayment amount for each brand name drug. ~~the same copayment amount a medical assistance recipient incurs for the same copayment amount a medical assistance recipient incurs for a similar prescription pursuant to s. 49.45 (18), Stats. However, the partial medical assistance copayment exemptions in s. 49.45 (18), Stats., do not apply to a program participant.~~

SECTION 3. HFS 154.07 (4) is amended to read:

HFS 154.07 (4) PARTICIPANT COPAYMENT. When a pharmacy directly bills the adult cystic fibrosis program for a prescription received by a program participant, the participant is responsible for a \$5 copayment amount for each generic drug and a \$10 copayment amount for each brand name drug. ~~the same copayment amount a medical assistance recipient incurs for the same copayment amount a medical assistance recipient incurs for a similar prescription pursuant to s. 49.45 (18), Stats. However, the partial medical assistance copayment exemptions in s. 49.45 (18), Stats., do not apply to a program participant.~~

The rules contained in this order shall take effect as emergency rules upon publication in the official state newspaper as provided in s. 227.24 (1) (c), Stats.

Wisconsin Department of Health
and Family Services

Dated: June 26, 2002

By:


Phyllis Dubé
Secretary

SEAL:



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Terry C. Anderson
Legislative Council Director

Richard Sweet
Clearinghouse Assistant Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE **02-070**

AN ORDER to amend HFS 152.065 (6), 153.07 (4) and 154.07 (4), relating to reimbursement for treatment of chronic renal disease; to reimbursement for blood products and supplies used in the home care of hemophilia; and to reimbursement for treatment of persons with cystic fibrosis.

Submitted by **DEPARTMENT OF HEALTH AND FAMILY SERVICES**

05-23-2002 RECEIVED BY LEGISLATIVE COUNCIL.

06-07-2002 REPORT SENT TO AGENCY.

RNS:LR

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 02-070

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

4. Adequacy of References to Related Statutes, Rules and Forms

In the analysis of the rule, three sections of the statutes are cited as authority for the rule. Since two of these sections are lengthy, is it possible to cite specific subsections or paragraphs that provide authority for the rule? Also, the department should consider citing s. 227.11 (2) (a), Stats., as authority for the rule.

PROPOSED ORDER OF THE
DEPARTMENT OF HEALTH AND FAMILY SERVICES
AMENDING RULES

The Wisconsin Department of Health and Family Services proposes an order to amend HFS 152.065 (6), relating to reimbursement for treatment of chronic renal disease, to amend HFS 153.07 (4), relating to reimbursement for blood products and supplies used in the home care of hemophilia and to amend HFS 154.07 (4), relating to reimbursement for treatment of persons with cystic fibrosis.

Analysis Prepared by the Department of Health and Family Services

The Wisconsin Chronic Disease Program (WCDP) is the payer of last resort for working poor persons with medical problems relating to chronic renal disease, cystic fibrosis or hemophilia. The Department administers the WCDP. The WCDP reimburses beneficiaries' dialysis and transplant services, home supplies, lab and x-ray services and kidney donor services for chronic renal disease recipients. Cystic fibrosis recipients are eligible for reimbursement of hospital services, certain physician services, lab and x-ray services, prescription medication and some home supplies. Recipients with hemophilia receive reimbursement for blood derivatives and supplies necessary for home infusion. The program's annual \$5 million budget is entirely state funded. About 90% of the budget (\$4.5 million) funds the care of chronic renal disease recipients, of which 60% (\$2.7 million) is for drugs. Drug costs are increasing at a rate of at least 10% per year. The Wisconsin 2001-03 biennial budget does not provide for increases of this magnitude. Consequently, the WCDP will likely have an estimated shortfall of about \$900,000 in the 2001-03 biennium. Generic drugs will be emphasized and an expanded drug rebate program will be implemented. In addition, WCDP drug copayment amounts need to be increased. The Department's administrative rules governing WCDP currently limit the drug copayment amounts to the \$1 used by the Wisconsin Medicaid Program.

The proposed new WCDP prescription drug copayment amounts are \$5 for generic drugs and \$10 for brand name drugs. These new copayment amounts resemble those used by commercial health insurers and were determined by the Department in consultation with the Chronic Renal Disease Program Advisory Committee.

The proposed rules potentially affect approximately 6,500 individuals with chronic renal disease, 200 individuals with hemophilia and 150 individuals with cystic fibrosis. Approximately 41% of persons enrolled in the program received state-funded benefits in 2000-01. The rest either incurred no expenses that were covered under these programs, or their expenses did not exceed the required deductibles.

more specific
The Department's authority to amend these rules is found in ss. 49.68, 49.683 and 49.685, Stats. The rules interpret ss. 49.68 (2) (c) and (3) (b), 49.683, 49.685 (6) and 49.687, Stats.

SECTION 1. HFS 152.065 (6) is amended to read:

HFS 152.065 (6) PATIENT COPAYMENT. When a pharmacy directly bills the chronic renal disease program for a prescription received by an ESRD patient, the patient is responsible for a \$5 copayment amount for each generic drug and a \$10 copayment amount for each brand name drug. ~~the same copayment amount a medical assistance recipient incurs for a similar prescription pursuant to s. 49.45 (18), Stats. However, the partial medical assistance copayment exemptions in s. 49.45 (18), Stats., do not apply to an ESRD patient.~~

CNR 94-82

SECTION 2. HFS 153.07 (4) is amended to read:

HFS 153.07 (4) PARTICIPANT COPAYMENT. When a pharmacy directly bills the hemophilia home care program for a prescription received by a program participant, the participant is responsible for a \$5 copayment amount for each generic drug and a \$10 copayment amount for each brand name drug. ~~the same copayment amount a medical assistance recipient incurs for the same copayment amount a medical assistance recipient incurs for a similar prescription pursuant to s. 49.45 (18), Stats. However, the partial medical assistance copayment exemptions in s. 49.45 (18), Stats., do not apply to a program participant.~~

SECTION 3. HFS 154.07 (4) is amended to read:

HFS 154.07 (4) PARTICIPANT COPAYMENT. When a pharmacy directly bills the adult cystic fibrosis program for a prescription received by a program participant, the participant is responsible for a \$5 copayment amount for each generic drug and a \$10 copayment amount for each brand name drug. ~~the same copayment amount a medical assistance recipient incurs for the same copayment amount a medical assistance recipient incurs for a similar prescription pursuant to s. 49.45 (18), Stats. However, the partial medical assistance copayment exemptions in s. 49.45 (18), Stats., do not apply to a program participant.~~

The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, as provided in s. 227.22 (2) (intro), Stats.

Wisconsin Department of Health
and Family Services

Dated:

By: _____
Phyllis Dubé
Secretary

SEAL: