INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE

Pharmacy Benefits Cards

Reproposed New Rules: N.J.A.C. 11:4-55

Authorized By: Holly C. Bakke, Commissioner, Department of Banking and Insurance

Authority: N.J.S.A. 17:1-8.1 and 17B:30-39

Calendar Reference: See Summary below for explanation of exception to the calendar requirements.

Proposal Number: PRN 2004-101

Submit comments by June 18, 2004 to:

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The agency proposal follows:

Summary

P.L. 2001, c. 200 (the Act), codified at N.J.S.A. 17B:30-35 et seq., took effect on September 1, 2002. The Act requires all carriers (insurance companies, health service corporations, hospital service corporations, medical service corporations and health maintenance organizations), multiple employer welfare arrangements, and other providers of health benefits plans that provide pharmacy benefits to issue cards or other technology containing specified information related to their pharmacy benefits coverage. "Health benefits plans" include plans providing prescription coverage only, but does not include the following: (1) accident-only

insurance; (2) credit accident and health insurance; (3) Medicare supplement insurance, (4) Medicaid fee-for-service; (5) disability income insurance; (6) long-term care insurance; (7) specified disease insurance; (8) dental or vision care plan; (9) hospital indemnity insurance; (10) coverage issued as a supplement to liability insurance; (11) medical payments under automobile or homeowners insurance; or (12) insurance under which benefits are payable without regard to fault and that are statutorily required to be included in a liability policy or equivalent self-insurance program.

The purpose of the Act is to assure that pharmacists have the essential information they need to fill prescriptions covered by a carrier, multiple employer welfare arrangement or other provider of health benefits plans in an efficient manner. Under the current system, pharmacists may not have vital information about prescription drug coverages.

On October 21, 2002, the Department proposed new rules on this issue. (See 34 N.J.R. 3591(a)) The Department received four comments on that proposal. The Department carefully considered these comments and decided to incorporate some of the suggestions made in the comments into the rules. Because the resulting changes to the rules as proposed were substantive and required additional public notice and comment, the Department now reproposes the new rules.

The Department of Banking and Insurance (Department) received written comments on its original proposal from Michelle K. Guhl, President, New Jersey Association of Health Plans; Timothy B. Meyer, Vice President, Government Relations, Oxford Health Plans; Robert P. Morris, Jr., Political Relations Analyst, Health Net of the Northeast, Inc.; and Heidi A. Stokes, Director of Governmental Affairs, Independent Pharmacy Alliance of America, Inc.

COMMENT: One commenter was generally pleased with the proposal. The commenter stated that it appears to promote the intent of the law, which was to improve patient care by reducing the waiting times of covered individuals when having prescriptions filled.

RESPONSE: The Department appreciates the expression of support for the proposal.

COMMENT: Several commenters stated that, although they applauded the Department's efforts in crafting the proposal, they were concerned with one aspect of the rules as it relates to the statute they are implementing. One commenter stated that N.J.S.A. 17B:30-37(b) states that a carrier "may use data elements that are required by State or federal regulations adopted pursuant to the 'Health Insurance Portability and Accountability Act of 1996' (HIPAA), Pub.L. 104-1991, in place of the information required pursuant to Section 2 of this Act." Several commenters noted that Section 2 of the Act sets out a specific list of elements that are to appear on the card and that this is also carried forward in the proposal. The commenters noted that the proposal contains no reference to the option to use data elements required by State or federal regulations adopted pursuant to HIPAA in place of the information required by Section 2 of the Act (N.J.S.A. 17B:30-36). The commenters stated that this omission appears to be contrary to the intent of the statute. The commenters went on to urge the Department to insert the language referring to this option upon final adoption.

RESPONSE: The Department agrees with these commenters. Although the comments did not make reference to, and the Department is unaware of, any data elements that are required by State or federal regulations adopted pursuant to HIPAA, upon review, the Department believes that it is appropriate for these new rules to refer to the statutory provision in question.

Accordingly, the Department has revised N.J.A.C. 11:4-55.2(c) to include such a reference in the reproposal.

COMMENT: One commenter stated that many of the required elements of the identification card for pharmacy benefits, as set forth in N.J.S.A. 17B:30-36, include the qualifier "when required for proper claims adjudication." The commenter believes that the proposal at N.J.A.C. 11:4-55.2(c)1, 2 and 4 should include this qualifier.

RESPONSE: The Department agrees and has made the revision in the reproposal.

COMMENT: One commenter stated that the governing statute refers to carriers' obligations to comply with the implementation guide of the National Council for Prescription Drug Benefits (NCPDB). The commenter went on to state that the NCPDB does not require that the group number be listed on the pharmacy benefits card. The commenter noted that the statute requires the inclusion of the group number and other listed information "when required for proper claims adjudication." The commenter stated that they do not use a group number in the adjudication of pharmacy claims and suggest that the proposed rules be changed so that the rules reiterate the statutory provisions that certain listed information, like the group number, is only necessary to be included on the pharmacy card "when required for proper claims adjudication."

RESPONSE: The Department agrees and has made the revision in the reproposal.

COMMENT: One commenter stated that Chapter 200 of the laws of 2001 does not contain a 60-day time limit within which a carrier must issue a pharmacy benefit card. The commenter stated

that, as the statute does not impose this time limit, the proposed provisions in N.J.A.C. 11:4-55.3(a) and (b) prescribing the time limit should be eliminated.

RESPONSE: The Department disagrees. The statute requires that pharmacy cards be issued, and empowers the Department to promulgate rules to implement the statute. A requirement to issue cards with no time limit cannot be effectively enforced. Because the statute did not specify a time limit, the Department is exercising its authority to establish one and has determined, after review, that 60 days is reasonable.

COMMENT: One commenter was concerned with the 60-day time limit proposed at N.J.A.C. 11:4-55.3. The commenter stated it was not clear that a pharmacist would still be able to adjudicate a claim under an old benefits card until a new one is issued within the 60-day time period, or until the insurer issued the card, if it was issued after the 60 days. The commenter was also concerned about the situation where an insurance carrier did not issue the card within the required 60-day time period, or if the card was lost while being transmitted in the mail. The commenter inquired whether, in those circumstances, the pharmacist would be able to continue to adjudicate an existing claim under the old card until the beneficiary receives the new pharmacy card.

RESPONSE: The concerns raised by the commenter about potential difficulties in receiving pharmacy benefits in various situations are valid but beyond the scope of the rule. Carriers are obligated to pay benefits according to their plan, regardless of whether the covered person makes their card available, and regardless of whether the information on the card is accurate. The statute clearly contemplates situations where a card with correct information will not be available. The purpose of the statute and these rules is to facilitate the prompt payment of

pharmacy claims by reducing, insofar as is practical, the number of situations where this complication occurs.

Reproposed N.J.A.C. 11:4-55.1 contains definitions of words and terms used in the subchapter.

Reproposed N.J.A.C. 11:4-55.2 would require a carrier, multiple employer welfare arrangement or other provider of a health benefits plan that provides pharmacy benefits to issue, or cause to be issued, a card that contains certain information, such as the issuer name, American National Standards Institute (ANSI) identification number, processor control number if required by the processor, group number, identification number, insured's name, and a number for providers to call for pharmacy benefits assistance. It also contains special requirements for "combined cards" that access other benefits in addition to pharmacy benefits. Lastly, in this reproposal the card issuer is required to include the insured's name on any additional cards issued to other persons.

Reproposed N.J.A.C. 11:4-55.3 sets forth the time limits within which a carrier, multiple employer welfare arrangement or other provider of a health benefits plan that provides pharmacy benefits shall issue, or cause to be issued, a pharmacy benefits card. These time requirements are as follows: (1) cards shall be issued within 60 days of a health benefits plan becoming effective; (2) cards shall be issued within 60 days of the date on which the primary insured becomes eligible for coverage under an existing health benefits plan; and (3) cards shall be issued within 180 days of a change in the information required to be on the card (if such information is required for proper claims adjustment), but an updated card is not required to be issued more frequently than once in a calendar year.

If a card has not been issued or if the information on the card does not reflect the insured's current coverage, reproposed N.J.A.C. 11:4-55.4 would require a carrier, multiple employer welfare arrangement, or other health benefits provider to provide the primary insured with a telephone number that can be used to obtain the information that would be on the card. In the reproposed rule it is also required that the informational phone line be maintained during regular business hours.

A new N.J.A.C. 11:4-55.5 is proposed. It will require that carriers issuing a card pursuant to the reproposed new rules shall make an informational filing of the form of the card with the Department. The subsection also sets forth the time frame for this filing and what group is to receive the filing at the Department.

Reproposed N.J.A.C. 11:4-55.6 provides that the rules shall apply to policies or contracts issued and/or renewed 30 days after the operative date of the rule.

A 60-day comment period is provided in this reproposal and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the reproposal is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The Act establishes the requirement to issue pharmacy benefits cards and provides guidance regarding the content and other aspects of the cards. The purpose of the Act is to assist pharmacists in obtaining information about coverage benefits of pharmacy prescriptions more efficiently. The main social impact comes from the Act rather than from these reproposed new rules. Pharmacists should receive the essential information they need regarding coverage of prescription drugs through the data on the cards required by the reproposed new rules. This

should enhance the ability of consumers to obtain covered prescriptions in a more timely and efficient manner.

The burden of producing the cards will be borne by the regulated industry. The reproposed new rules impose no additional burdens beyond those that are required by the Act. The Department believes that the overall social impact of the rules will be positive.

Economic Impact

As discussed in the Social Impact above, the purpose of the Act is to assist pharmacists in obtaining information about coverage of prescriptions more efficiently. Pharmacists should receive the essential information they need regarding pharmacy benefits coverage of prescription drugs through the data on the cards. The Department believes that there will be economic benefits from the efficiencies that will be gained in this regard. Although the Department is not aware of any data regarding the amount of time that pharmacists currently spend in searching for pharmacy benefits data, information supplied by pharmacists indicates that it is substantial.

The burden of providing the cards will be borne by carriers, multiple employer welfare arrangements or other providers of health benefits plans that provide pharmacy benefits. The Department is sensitive to cost considerations and the reproposed new rules provide that those benefit providers who are required to issue cards are not required to reissue a card with revised information more frequently than once in a calendar year. Further, if there is no change in the information included on the card, card issuers are not required to reissue pharmacy identification cards with any particular frequency. Further, no specialized requirements (such as font size) are being proposed.

The Department also notes that it is currently a common practice for those subject to the Act to provide benefit cards to their insureds. Thus, the main effect of the reproposed new rules would be to require that uniform, specified information be included in the cards that are presently being issued by many benefit providers. The Department anticipates that the cost savings realized through the increased efficiency with which prescription drug benefit claims will be processed due to the additional and uniform information being included on the cards will exceed the costs of including the required standard data on the cards and in issuing such cards.

Federal Standards Statement

There are no Federal statutes or rules that apply to the subject matter of these reproposed new rules. Therefore, the reproposed new rules do not contain standards or requirements that exceed standards or requirements imposed by Federal law. No further Federal standards statement is required.

Jobs Impact

The Department does not believe that the reproposed new rules will cause any significant number of jobs to be generated or lost. The Department anticipates that a few jobs may be created in industries making benefit cards, and a few jobs may be lost among pharmacists because of the greater efficiency that will be achieved in claims processing. The Department invites interested parties to submit any data or studies concerning the job impact of the reproposed new rules.

Agriculture Industry Impact

Pursuant to N.J.S.A. 4:1C-1 et seq., the Right to Farm Act, and N.J.S.A. 52:14B-4(a)(2), the Administrative Procedure Act, the Department does not expect any agriculture industry impact from the reproposed new rules.

Regulatory Flexibility Analysis

Some of the entities that would be affected by the reproposed new rules may be small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Pharmacies are not subject to any new reporting, recordkeeping, or compliance requirement. Carriers, multiple employer welfare arrangements and other health benefit plan providers subject to the Act are required to produce pharmacy benefits cards containing the required information. This is a compliance requirement. Also, carriers, multiple employer welfare arrangements and other health benefits providers issuing cards are required to make an informational filing with the Department within 30 days of starting to issue a pharmacy benefit card. This is a reporting requirement.

The costs of compliance are discussed in the above Economic Impact. Since those who are providing the benefits are already issuing cards, there should be no need for any additional outside consultants or professional services.

The goal of the Act and the reproposed new rules is to specify a uniform body of information that would be available to pharmacists filling prescriptions under plans providing prescription drug benefits. Because of the need for uniformity in the information that is provided to pharmacists, and to the Department in the informational filing, the Department makes no distinction between small businesses and other businesses that provide prescription drug benefits in these reproposed new rules.

Smart Growth Impact

The reproposed new rules have no impact on the achievement of smart growth and implementation of the State Development and Redevelopment plan.

Full text of the reproposed new rules follows:

SUBCHAPTER 55. PHARMACY CARDS

11:4-55.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

“ANSI identification number” means the American National Standards Institute (ANSI) International ID Number assigned to the administrator or pharmacy benefits manager of the health benefits plan. The label for this number is “RxBIN.”

"Card" means a card or other technology that functions like a card.

“Carrier” means an insurance company, health service corporation, hospital service corporation, medical service corporation or health maintenance organization authorized to issue health benefits plans in this State.

“Comprehensive pharmacy benefits” means benefits covering prescription drugs on an outpatient basis, irrespective of whether the benefits are provided by a network of participating pharmacies, and irrespective of whether the benefits are in the form of the prescription drugs themselves or are in the form of reimbursement for the cost of the prescription drugs. “Comprehensive pharmacy benefits” shall not mean benefits limited to prescription drugs provided in connection with mandated benefits for specific diseases or conditions.

"Group number" means the group number for the insured. The label for this number is "RxGRP."

"Health benefits plan" means:

1. A health benefits plan that is delivered or issued for delivery in this State by or through a carrier;
2. A plan provided by a multiple employer welfare arrangement; or
3. A plan provided by another benefit arrangement, to the extent permitted by the "Employee Retirement Income Security Act of 1974," Pub. L. 93-406 (29 U.S.C. §§ 1001 et seq.), or by any waiver of or other exception to that act provided under Federal law or regulation. "Health benefits plan" shall include prescription-only coverage.

"Health benefits plan" shall not mean:

1. Accident-only insurance;
2. Credit accident and health insurance;
3. Medicare supplement insurance,
4. Medicaid fee-for-service;
5. Disability income insurance;
6. Long-term care insurance;
7. Specified disease insurance;
8. Dental or vision care plan;
9. Hospital indemnity insurance;
10. Coverage issued as a supplement to liability insurance;
11. Medical payments under automobile or homeowners insurance; or

12. Insurance under which benefits are payable without regard to fault and that are statutorily required to be included in a liability policy or equivalent self-insurance program.

"Identification number" or "ID" means the identification number for the insured. This number shall be labeled "ID," except that, in the case of a combined card where the identification number for pharmacy benefits differs from the identification number for other benefits, the number shall be labeled "RxID."

"Insured's name" means the name of the primary insured or, if a separate card is issued for another person included under the primary insured's coverage, the name of the covered person to whom the separate card is issued.

"Issuer name" means the name of the sponsor, carrier, or administrator of the plan (which name may be abbreviated), or the name of a plan of benefits.

"Primary insured" means, in the case of group or individual coverage covering more than one person based on their relationship to an eligible person, such eligible person.

"Processor control number" means the processor control number assigned by the administrator or pharmacy benefits manager. The label for this number is "RxPCN."

11:4-55.2 Requirement to issue cards

(a) Each carrier, multiple employer welfare arrangement, or other provider of a health benefits plan that provides pharmacy benefits shall issue, or cause to be issued, to the primary insured a card satisfying the requirements of N.J.S.A. 17B:30-35 et seq. and this section. At the option of the issuer, additional cards may be issued to other persons included under the primary insured's coverage. Such additional cards shall bear the insured's name. The carrier or other

provider may contract with an administrator, agent, contractor or other vendor to issue the cards; however, the carrier or other provider shall remain responsible for the proper issuance of the cards and for their compliance with the law.

(b) A card may be issued for pharmacy benefits only (“stand alone card”) or may be issued for pharmacy benefits in combination with other benefits ("combined card”).

(c) Until such time as State or Federal regulations are adopted pursuant to the “Health Insurance Portability and Accountability Act of 1996,” P.L. 104-191, specifying data elements that may be used in place of the information listed below, the following information must, subject to (e) and (f) below, appear on all pharmacy benefits cards:

1. The issuer name, when required for proper claims adjudication;
2. The ANSI identification number (properly labeled), when required for proper claims adjudication;
3. The processor control number (properly labeled), if required by the party adjudicating claims, directing payment of claims or directing the adjudication of claims;
4. The group number (properly labeled), when required for proper claims adjudication;
5. An identification number (properly labeled);
6. The insured’s name; and
7. A telephone number for providers to call for pharmacy benefits assistance.

(d) Where information is required to be "properly labeled," the label (for example, "RxBIN") shall be placed close enough to the information so as to identify that information uniquely.

(e) If a combined card is used, the issuer name for pharmacy benefits shall be:

1. The same as for other benefits; or

2. Clearly distinguishable from the issuer name for other benefits.

(f) The identification number, if a combined card is used, shall be the same for pharmacy benefits and all other benefits, or the ID for pharmacy benefits shall be labeled "RxID" rather than "ID."

11:4-55.3 Time limits

(a) A carrier, multiple employer welfare arrangement, or health benefits provider shall provide each primary insured a new pharmacy identification card within 60 days of a health benefits plan becoming effective.

(b) A card shall be issued to the primary insured within 60 days of the primary insured initially becoming eligible for coverage under an existing health benefits plan (for example, new employee).

(c) A carrier, multiple employer welfare arrangement, or other health benefits provider shall provide each primary insured a new pharmacy identification card within a reasonable time, not to exceed 180 days, after a change in the insured's coverage that changes the information required to be on the card, if the issuance of a new card is required for proper claims adjustment. However, the carrier, multiple employer welfare arrangement, or other health

benefits provider shall not be required to issue a new card reflecting changes in information more than once in a calendar year.

11:4-55.4 Access to information

If a card has not been issued, or if the information on a card does not reflect the insured's current coverage, the carrier, multiple employer welfare arrangement or other health benefits provider shall provide the primary insured with a telephone number that can be used to obtain the information that would or should be on the card. This number shall be maintained during normal business hours.

11:4-55.5 Informational filing

(a) Every carrier, multiple employer welfare arrangement or other health benefits provider issuing a card pursuant to this subchapter shall make an informational filing of the form of the card with the Department of Banking and Insurance within 30 days after issuing or causing the card to be issued. The filing shall contain:

1. The form of the card, with all required information specific to the fictitious insured. All variants of the form shall be identified; and

2. An explanation of any variation in information from the information listed in N.J.A.C. 11:4-55.2(c) and this subchapter.

(b) Informational filings shall be sent to the Department at the following address:

New Jersey Department of Banking and Insurance
Attention: Life and Health Division
Pharmacy Benefits Card Filings
20 West State Street

PO Box 325
Trenton, NJ 08625-0325

11:4-55.6 Operative date

This subchapter shall apply to policies or contracts issued and/or renewed after (30 days after the effective date of the rule).

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