WEST VIRGINIA INSURANCE BULLETIN
No. 24 – 05

Insurance Bulletins are issued when the Commissioner renders formal opinions, guidance or expectations on matters or issues, explains how new statutes or rules will be implemented or applied, or advises of interpretation or application of existing statutes or rules.

► Pharmacy Audit Integrity Act and Drug Discount Plans and Pharmacy Coupon Cards ◄

This Insurance Bulletin is being issued to address the applicability of West Virginia Code Chapter 33, Article 51, the *Pharmacy Audit and Integrity Act* ("Act"), to certain pharmacy transactions processed, in part, by prescription drug discount plans or pharmacy coupon cards. It is the West Virginia Offices of the Insurance Commissioner's ("OIC") position that the Act applies to certain pharmacy transactions processed by prescription drug discount plans or pharmacy coupon cards when a pharmacy benefit manager ("PBM") utilizes a prescription drug discount plan or pharmacy coupon card as part of its claims processing or pharmacy benefits management services for a health benefit plan as part of its agreement or contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services on behalf of a health care payor to a covered individual.[1] To further explain, the OIC offers the following examples:

Example 1

Patient X arrives at a West Virginia pharmacy with a prescription drug discount plan or pharmacy coupon card and presents the plan/card to a pharmacy staff member. The West Virginia pharmacy submits the transaction to the plan/card or to an intermediary that processes the claim on behalf of the prescription drug discount plan or pharmacy coupon card. The plan/card is not offered by the PBM, health benefit plan or health care payor. The prescription drug discount plan or pharmacy coupon card is not incentivized by, promoted by, or in any way connected to the pharmacy benefits coverage provided by the PBM, health benefit plan or health care payor. Patient X is making the independent decision to use the prescription drug discount plan or pharmacy coupon card in lieu of his or her prescription drug benefits or Patient X does not present or in any way attempt to utilize a prescription drug benefit provided by a PBM, health benefit plan or health care payor and the pharmacy does not submit the claim to a PBM pursuant to a health benefit plan's agreement or contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services on behalf of a health care payor to a covered individual. The West Virginia pharmacy is then paid according to the reimbursement schedule agreed upon between pharmacy and the prescription drug discount plan or pharmacy coupon card.

[1] Pharmacy Benefits Manager, Pharmacy Benefits Management, Health Benefit Plan, Health Care Payor, and Covered Individual are all defined in W.Va. Code §33-51-3.

In this example, the West Virginia pharmacy transaction is not subject to the Act because there was no PBM involved in this transaction and Patient X did not use or attempt to use his or her health benefit plan to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services.

Example 2

Patient Y arrives at a West Virginia pharmacy to obtain his or her prescription and presents a card to pharmacy staff containing Patient Y's information regarding Patient Y's health coverage from a health benefit plan or health care payor. The pharmacy submits the claim to the health benefit plan or health care payor's contracted PBM as part of the agreed upon pharmacy benefit. As part of processing the claim, the PBM transfers the claim from the covered individual's health benefit plan to a prescription drug discount plan or pharmacy coupon card and the claim is subsequently processed by the plan/card. The drug discount plan or pharmacy coupon card sends the approved claim back to the PBM, which then returns the claim to the pharmacy. Patient Y pays the cost associated with the drug discount plan or pharmacy coupon card rather than the cost-sharing amount required under their health benefit plan, and that amount is applied to Patient Y's deductible. The pharmacy is reimbursed according to the schedule agreed upon between the pharmacy and the prescription drug discount plan or pharmacy coupon card instead of the mandatory reimbursement set forth in the Act (generally, NADAC plus a $10.49 dispensing fee).

In Example 2, the transaction is subject to the Act and the mandatory reimbursement provisions therein despite the claim being processed, in part, by a drug discount plan or pharmacy coupon card. As such, the claim should have been paid according to the reimbursement provisions in the Act, and not according to the terms of any separate reimbursement provisions negotiated between a pharmacy and a drug discount plan or pharmacy coupon card. In Example 2, payment to the pharmacy of anything less than the mandatory reimbursement prescribed by Chapter 33, Article 51, regardless of whether the pharmacy has a negotiated rate with the discount drug plan or pharmacy coupon card, is a violation of the Act by a PBM. This is due to several factors:

- Patient Y's claim originated as an attempt by Patient Y to utilize his or her pharmacy benefit, which was administered by a PBM and provided by a health benefit plan or health care payor. Patient Y presented his or her health benefit card to the West Virginia pharmacy. Patient Y did not present a drug discount plan or pharmacy coupon card to the West Virginia pharmacy. Conversely, in Example 1, Patient X only presented a drug discount plan or pharmacy coupon card to the West Virginia pharmacy and did not attempt to use his or her health benefit plan;
- Patient Y's claim was received and initially processed by the PBM in the same manner as a pharmacy claim made under a health benefit plan, but the PBM's internal adjudication diverted the claim to a drug discount plan or pharmacy coupon card, presumably to avoid the mandatory reimbursement provisions governing PBMs, health benefit plans and health care payors, required by the Act;
- The PBM diverted the claim to the drug discount plan or pharmacy coupon card on its own volition or according to its own internal adjudication process, even though Patient Y had prescription drug coverage through a health benefit plan or health care payor with whom the PBM was contracted; and
- The PBM applied the cost Patient Y paid for the prescription under the drug discount plan or pharmacy coupon card to Patient Y's deductible under his or her health benefit plan.

Example 2 is not the only situation wherein the Act, including the mandatory reimbursement rates therein, could apply to a transaction involving a drug discount plan or pharmacy coupon card, nor is it required that all the above factors, which are provided only for illustrative purposes, be present for the Act to apply to a particular transaction. The main inquiry is whether the transaction involves the provision of prescription drug

coverage to a covered individual by a health benefit plan, health care payor or PBM, thus subjecting the transaction to the provisions of the Act. The Act applies to claims reimbursed to a pharmacy by a PBM. A PBM that is contracted to administer claims for a health benefit plan or health care payor cannot simply avoid mandatory reimbursement provisions in the Act by diverting or routing a covered claim for a covered individual through a drug discount plan or pharmacy coupon card.

A PBM that is found to have violated the reimbursement provisions of the Act by the internal diversion of a covered pharmacy claim for a covered individual to a drug discount plan or pharmacy coupon card, whether it is discovered through a complaint, data reporting or examination, may be penalized in accordance with state law.

Generally, drug discount plans or issuers of pharmacy coupon cards are not required to be licensed in West Virginia under the Act.[2] However, if a drug discount plan or the issuer of a pharmacy coupon card is performing pharmacy benefits management services, as defined in W.Va. Code §33-51-3, for a health benefit plan or health care payor through an agreement with a PBM, the drug discount plan or issuer of the pharmacy coupon card may be deemed to be operating as a PBM in West Virginia and be required to be licensed as a PBM pursuant to W.Va. Code §33-51-8. The definition of pharmacy benefits management set forth in W.Va. Code §33-51-3 is broad and any entity performing any of those services for a health benefit plan, either directly or through a contract with a PBM, must be licensed as a PBM pursuant to W.Va. Code §33-51-8. An entity operating as a PBM without a license in West Virginia will be subject to enforcement action, including an action for injunctive relief, restitution to affected entities, and a monetary fine or penalty.

Please e-mail questions concerning this Insurance Bulletin to OICBulletins@wv.gov or call (304) 558-0401.

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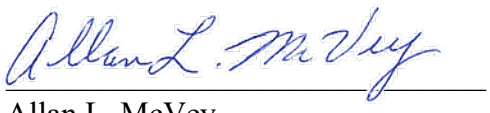

Allan L. McVey
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Insurance Commissioner

[2] Discount prescription drug plans that, in exchange for fees, dues, charges or other consideration, provide access to and discounts on pharmacy services may be subject to provisions of Chapter 33, Article 15E of the West Virginia Code regardless of whether they operate as PBMs.