State Advocacy Leader

STATE MODEL LEGISLATION

Electronic Prescription Tools

AN ACT RELATING TO ELECTRONIC PRESCRIPTION TOOLS, AMENDING _____.

PURPOSE: The federal regulatory landscape is changing to address prior authorization and interoperability through the Centers for Medicare and Medicaid (CMS).

Specifically, The CMS's Interoperability and Patient Access rule requires Medicaid, the Children's Health Insurance Program (CHIP), Medicare Advantage (MA) plans, and qualified health plans make enrollee data available immediately and allow their members free and fast access to their own claims and clinical information maintained by the plan by July 1, 2021.

CMS recently finalized a rule to automate the prior authorization process by mandating Medicaid, CHIP, and Qualified Health Plans to allow electronic access to prior authorization decisions. This rule is currently under a regulatory freeze while under review by the Biden Administration.

The CMS Rule is indicative of an overall trend toward interoperability, which yields to patients and their own health records. As the landscape cultivates the utilization of digital health technologies, and the rising cost of out-of-pocket health care, it is important to pursue data-sharing and EHR interoperability transparency across all levels of the industry, including public and private care.

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BE IT ENACTED:

SECTION 1. Definitions. For purposes of this measure, the following definitions shall apply.

(1) “Electronic Prescribing” shall have the same meaning as defined in Section _____.

(2) “NCDPDP SCRIPT Standard” shall mean the same as the National Council for Prescription Drug Programs SCRIPT Standard Version 2013101, or the most recent standard adopted by the United States Department of Health and Human Services. Subsequently released versions of the NCPDP SCRIPT Standard may be used, provided that the new version of the standard is backward compatible to the current version adopted by United States Department of Health and Human Services.

(3) “Prior Authorization” shall have the same meaning as defined in Section _____.

(4) “Carrier” shall have the same meaning as a health carrier as defined in Section _____.

SECTION 2. Requirements for Electronic Prescription and Real-Time Benefits. Section _____ is amended to read:

(1) A carrier, or an entity acting on a carrier's behalf, in coordination with a prescribing practitioner or his or her agent shall electronically provide to any policyholder a real-time benefit tool at the point of prescription that provides

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information regarding patient prescription price transparency and patient access to prescribed medication required pursuant to this Act.

(2) The patient information shall minimally outline required information for an electronic prescription, including but not limited to:

a) The name, address, and phone number of the prescriber;

b) The full name of the authorized patient;

c) An electronic signature;

d) The time and date of the transmission;

e) The identity of the pharmacy intended to receive and fill the prescription;

f) Other information as required by law.

(3) A real-time benefit tool shall provide a policyholder information concerning:

a) Patient-specific eligibility;

b) Patient-specific prescription cost and benefit data, including applicable formulary, benefit, coverage and cost-sharing data for the prescribed drug and clinically appropriate alternatives, when appropriate;

c) Patient-specific cost-sharing that describes variance in cost-sharing based on the pharmacy dispensing the prescribed drug or its alternatives, and in relation to the patient's benefit;

d) Lower cost clinically appropriate treatment alternatives; and

e) Applicable utilization management requirements, such as prior authorization.

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(4) A real-time benefit tool shall comply with technical standards adopted by an organization accredited by the American National Standards Institute.

(5) A real-time benefit tool shall not be prohibited from displaying cost, benefit and coverage information when known by the health plan that reflects other choices, such as cash price, patient assistance and support programs, and the cost available at the patient's pharmacy of choice.

(6) Prescribing practitioners or their agents shall be prohibited from declining to adopt a real-time benefit tool.

(7) Nothing in this section shall require a carrier to furnish a unique real-time benefit tool. A carrier may meet the requirements of this section by transmitting data through an intermediary, real-time network, switch, or other appropriate entity. Nothing in this act shall interfere with patient choice and a health care professional's ability to convey the full range of prescription drug cost options to a patient. A carrier or an entity acting on a carrier's behalf, shall not restrict a health care professional from communicating to the patient prescription cost options.

(8) Require Adequate Safeguards:

a) A real-time benefit tool shall fully inform patients of plan preferred drugs or pharmacies, and prescribing practitioners shall not utilize a real-time benefit tool to steer patients to any specific pharmacies.

b) Electronic prescribing software shall not use any means or permit any other person to use any means to influence or attempt to influence, through economic incentives or otherwise, the prescribing decision of a

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prescribing practitioner or his or her agent at the point of care, including, but not limited to, means such as advertising, instant messaging, and pop-up ads, and similar means.

c) _____ shall be responsible for ensuring health data are protected independent of how the care is provided, including clinical office visits, telehealth visits, among other avenues of delivery.

d) _____ shall take security measures such as but not limited to multifactor authentication, endpoint patching, IP whitelisting and credentialing to ensure these data remain protected.

e) Within ____business days of receipt, a carrier shall confirm receipt of a prior authorization request and any supporting documentation to the submitter. The carrier also shall assign a unique tracking number to the request. The tracking number shall identify the request throughout the processing cycle, including after approval or denial. The confirmation that includes the tracking number shall be communicated by electronic portal, fax, or email. A carrier shall provide the tracking number of a prior authorization request to the covered person upon request. A carrier may assign other identifiers to a prior authorization request.

SECTION 3. Prior Authorization. Section _____ is amended to read:

(1) Prior Authorization for Prescription Drugs. A carrier shall be subject to the following requirements:

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a) A carrier shall establish a timeline of response for electronic requests of prior authorization not to exceed 24 hours after a request that meets emergency criteria, and 72 hours after a request that meets non-emergency criteria.

b) For prior authorization requests related to drugs for chronic conditions, a plan must honor authorization for the lesser of 12 months from approval or the last day of eligibility. A plan may not retroactively deny an authorization if medical necessity and eligibility requirements are met.

    i. In cases where the federal Food & Drug Administration-approved label requires an evaluation of safety or effectiveness during the first 12 or fewer months of therapy, a plan may limit the authorization period to the label-required safety or effectiveness period.

(2) Exception Request. An enrollee, an enrollee's prescriber, or an enrollee's representative may request an exception in these instances:

a) A formulary exception shall be requested to obtain a drug that is not included on a plan sponsor's formulary, or to request exception to a utilization management requirement for a formulary drug;

b) A real-time prior authorization exception shall be requested when providers or prescribers face any obstacles undermining their ability:

    i. Unavailability to the software due to technical errors or power outages

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ii. Providers have received a waiver from the Department.

iii. The prescriber is out of state.

iv. The prescription is to be dispensed out of state.

c) A provider that requests an exception for an enrollee must submit a supporting statement to the plan sponsor supporting the request.

(3) Exemptions: A real-time prior authorization exemption may be requested in the following circumstances:

a) If the provider is a veterinarian.

b) If the prescription is issued and dispensed in the same health care facility, including but not limited to hospitals, treatment clinics, and long-term care facilities.

c) If the FDA requires the prescription to contain content that may not be transmitted electronically.

SECTION 4. Rule Promulgation and Effective Date. Section _____ is amended to read:

(1) Pursuant to Section _____, the Commissioner is empowered to promulgate rules to enforce the provisions of this Act.

(2) This Act shall go into effect on _____.

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