
LEGAL UPDATE

Legal Services Division



Ground Floor, State Capitol Building

Des Moines, Iowa 50319

515.281.3566

ADMINISTRATIVE RULES REVIEW COMMITTEE MEETING — MARCH 6, 2020

Purpose. *Legal updates are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update is intended to provide legislators, legislative staff, and other persons interested in legislative matters with summaries of recent meetings, court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although an update may identify issues for consideration by the General Assembly, it should not be interpreted as advocating any particular course of action.*

DEPARTMENT OF HUMAN SERVICES, *Medical Assistance—Drug Policies, Prior Authorization for Medication-Assisted Treatment, Prescription Refills, 2/12/20 IAB, ARC 4899C, ADOPTED.*

Background. This rulemaking updates language to reflect existing prescribed outpatient drug policies for qualified prescribers, reasons for nonpayments of drugs, covered nonprescription drugs, quantity prescribed, drug reimbursement methodology, including dispensing fee limitation, and credits for returned unit dose drugs not consumed, prohibits automatic refills without the member's consent, and includes legislatively required prior authorization limitations on medication-assisted treatment, including opioid overdose treatment, under the pharmacy and medical benefits for Medicaid.

Commentary. Public comment was received from Mr. Casey Ficek on behalf of the Iowa Pharmacy Association (IPA). He thanked the department for listening to feedback from IPA and making some changes to the rulemaking. He stated that IPA is still concerned regarding the prohibition on automatic refills. He acknowledged possible benefits of the prohibition, but asserted there is a significant difference between mail order pharmacies and local pharmacies regarding automatic refills. He explained that mail order pharmacies will sometimes continue to mail medications even after a patient has died, leading to waste. He explained that automatic refills do not cause such waste at a local pharmacy, where a patient picks up the prescription themselves and has the opportunity to talk with a pharmacist and where the pharmacist can discontinue automatic refills if a patient does not show up. In response to a question from committee members, he explained that in order for a pharmacy to provide an automatic refill, the patient or prescriber must request it. He was unsure how a patient request for automatic refills could be conveyed to a pharmacy under the rulemaking.

Ms. Marissa Eyanson, speaking on behalf of the department, said she handles her automatic refills via text message. Committee members asked how this would be handled for an older long-term care patient who may not use text messaging. She explained that the department works closely with pharmacies and doctors to meet the needs of the long-term care population. She explained that the rulemaking was pursued at the recommendation of the state's Medicaid Fraud Control Unit as well as to comply with federal legislation. Committee members urged the department to address those matters more directly in the rules. She provided a handout on the department's rationale for the rulemaking. She explained that the department is ready to implement the rulemaking without delay.

Committee members asked if IPA still has concerns regarding language in the rulemaking pertaining to dispensing fees. Mr. Ficek explained that IPA would prefer that the language not be included, but the department's explanation of refill tolerance had provided some helpful clarification. He explained that IPA is more concerned about having to provide different services under Medicare and Medicaid than it is about the dispensing fee language itself.

Public comment was received from Mr. Mark Joyce on behalf of Hy-Vee. He explained that Hy-Vee has 13,000 automatic refills in the Medicaid program in Iowa. He sought a delay of the portion of the rulemaking pertaining to automatic refills. He acknowledged that the issue came to his attention late in the rulemaking process. He expressed concern that the process for initiating automatic refills via text message is unclear.

Committee members expressed concern about ending automatic refills for current patients and the language of the rulemaking pertaining to dispensing fees.

Ms. Nancy Freudenberg, speaking on behalf of the department, expressed openness to delaying the entire rulemaking rather than portions of it.

Action. A motion for a session delay carried on a voice vote with nine members present.

Next Meeting. The next committee meeting will be held in Room 116, Statehouse, on Friday, April 3, 2020, beginning at 9:00 a.m.

LSA Staff Contacts: Jack Ewing, 515.281.6048 or Jack.Ewing@legis.iowa.gov;
Kate O'Connor, 515.281.6329 or Kate.OConnor@legis.iowa.gov

Internet Site: www.legis.iowa.gov/committees/committee?groupID=705

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