ARC 5228C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Proposing rule making related to prescription drug automatic refill program and providing an opportunity for public comment

The Human Services Department hereby proposes to amend Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 249A.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 249A.4.

Purpose and Summary

The proposed rule making establishes pharmacy policies and procedures for Medicaid coverage and reimbursement of prescription drug refills through an automatic refill program, rather than prohibiting such a program. This may improve medication adherence for chronic medical conditions. Some pharmacies may currently offer this type of program, and Medicaid proposes to standardize the requirements to ensure medical necessity and prevent waste.

The United States Government Accountability Office (GAO) recommended in its July 2015 report, "Medicaid: Additional Reporting May Help CMS Oversee Prescription-Drug Fraud Controls," that Medicaid programs review pharmacy automatic refill programs and corresponding Medicaid policies as a potential concern for waste and unnecessary costs.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any pursuant to rule 441—1.8(17A,217).

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on November 10, 2020. Comments should be directed to:

Nancy Freudenberg
Department of Human Services
Hoover State Office Building, Fifth Floor
1305 East Walnut Street
Des Moines, Iowa 50319-0114
Email: appeals@dhs.state.ia.us

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)"b," an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Amend subparagraph **78.2(6)"b"(2)** as follows:

(2) Automatic refills.

~~1. Automatic refills are not allowed. A request specific to each medication is required.~~

~~2. All prescription refills shall be initiated by a request at the time of each fill by the prescriber, Medicaid member or person acting as an agent of the member, based on continued medical necessity.~~

1. Automatic refills are allowed. Participation in an automatic refill program is voluntary and opt-in only, on a drug-by-drug basis.

2. The program must have:

- Easy-to-locate contact information through telephone, the program's website, or both;
- Easy-to-understand patient materials on how to select or unselect drug(s) for inclusion and how to disenroll;
- Confirmation that the member wants to continue in the automatic refill program at least annually;
- Confirmation of continued medical necessity provided by the Medicaid member or person acting as an authorized representative of the member, before the member receives the medication at the pharmacy or before the medication is mailed or delivered to the member, without which confirmation the drug(s) must be credited back to the Medicaid program; and
- Documentation of all consents, which must be available for review by auditors at the pharmacy.