ARC 5901C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency After Notice

Rule making related to prescription drug monitoring

The Human Services Department hereby amends Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code chapter 249A.

State or Federal Law Implemented

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

Purpose and Summary

Section 5042 of the SUPPORT for Patients and Communities Act, codified in 42 U.S.C. 1396w–3a, requires covered providers who are permitted to prescribe controlled substances and who participate in Medicaid to query qualified prescription drug monitoring programs (PDMPs) before prescribing controlled substances to most Medicaid beneficiaries, beginning October 1, 2021. This rule making adds requirements consistent with the federal and state requirements for Medicaid-participating providers. Iowa Medicaid providers must also comply with requirements under Iowa Code section 124.551A and their respective licensing boards in regard to utilizing the PDMP.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on June 16, 2021, as **ARC 5708C**. The Department received comments on the proposed rule in the following areas.

Comment 1: One respondent commented on the ability to allow a covered provider to delegate the ability to utilize the Prescription Monitoring Program (PMP) database.

Response 1: The Department agrees with the comment and has revised subrule 79.17(1) to add the prescribing practitioner's designated agent.

Comment 2: One respondent asked to amend the rules for practitioners to exclude utilizing the PMP database for an inpatient setting.

Response 2: The rule allows practitioners' review of the database to be conducted in accordance with all requirements under the practitioner's specific professional licensing authority. No changes were made as a result of this comment.

Comment 3: Two respondents commented on the additional work required for practitioners who prescribe controlled substances for Attention Deficit Hyperactivity Disorder and epilepsy. For example: checking the PMP every month or every six months.

Response 3: The federal law (Section 5042 of the SUPPORT for Patients and Communities Act, codified in 42 U.S.C. 1396w–3a) requires covered providers who are permitted to prescribe controlled substances and who participate in Medicaid to query qualified PDMPs before prescribing controlled substances. Medicaid is implementing this requirement to comply with the federal requirements. No changes were made as a result of this comment.

Comment 4: One respondent asked if providers would be required to check the PMP for other states.

Response 4: The requirement is to check the Iowa PMP. The Iowa PMP allows registered users to query other states' PMPs by selecting those states at the bottom of a patient request in the section titled "PMP InterConnect Search." Additional information can be found there. Providers would also have the discretion to sign up for surrounding states' PMPs. No changes were made as a result of this comment.

Comment 5: Two respondents asked if the State would require software requirements and provide state assistance with cost.

Response 5: The PMP is not a Medicaid system; it is operated by the Iowa Board of Pharmacy under the Iowa Department of Public Health. Providers would need to check with their electronic health record provider. Additional information can be found at Integration with PMP. No changes were made as a result of this comment.

Reason for Waiver of Normal Effective Date

Pursuant to Iowa Code section 17A.5(2)"b"(1)(b), the Department finds that the normal effective date of this rule making, 35 days after publication, should be waived and the rule making made effective on October 1, 2021, because the effective date of federal legislation is October 1, 2021, and because it provides a benefit to individual consumers and the general public by providing a method to monitor prescription controlled substance use to prevent drug misuse and improve patient care.

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on August 12, 2021.

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).

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).

Effective Date

This rule making will become effective on October 1, 2021.

The following rule-making action is adopted:

Adopt the following **new** rule 441—79.17(249A):

441—79.17(249A) Requirements for prescribing controlled substances.

79.17(1) *Review of Iowa prescription monitoring program database.* A prescribing practitioner, as defined in Iowa Code section 124.550, or the prescribing practitioner's designated agent, shall review patient information in the Iowa prescription monitoring program (PMP) database prior to issuing a prescription for a controlled substance as defined in 42 U.S.C. 1396w–3a, inclusive of Schedules II, III and IV, unless the patient is receiving inpatient hospice care or long-term residential facility care. Review shall be conducted in accordance with all requirements under the prescribing practitioner's specific professional licensing authority.

79.17(2) *Documentation.* The prescribing practitioner shall include documentation in the patient file to demonstrate compliance with subrule 79.17(1). Subject to the requirements under Iowa Code chapter 124, subchapter VI, if the prescribing practitioner is not able to conduct a review of the PMP database despite a good-faith effort, the prescribing practitioner must document in the patient file such good-faith effort, including the reasons why the prescribing practitioner was not able to conduct the review. The prescribing practitioner shall submit such documentation to the Iowa Medicaid program upon request.

This rule is intended to implement Iowa Code chapters 124 and 249A.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/8/21.