COMMITTEE REPORT

April 13, 2016

**S. 849**

Introduced by Senators Cromer, Allen and Scott

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Read the first time February 23, 2016.

**THE COMMITTEE ON MEDICAL,**

**MILITARY, PUBLIC AND MUNICIPAL AFFAIRS**

To whom was referred a Bill (S. 849) to amend the Code of Laws of South Carolina, 1976, by adding Article 20 to Chapter 71, Title 38 so as to provide procedures governing the maximum allowable cost reimbursements, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

LEON HOWARD for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Fiscal Impact Summary**

This bill would have no expenditure impact on the general fund, federal funds, or other funds.

**Explanation of Fiscal Impact**

**State Expenditure**

This bill amends Chapter 71, Title 38 relating to health insurance and benefits by adding Article 20 dealing with contracts between pharmacy benefits managers and pharmacists. The bill provides guidelines governing adjustments to the maximum allowable cost reimbursement for generic drugs paid by pharmacy benefits managers to pharmacists. The bill provides guidelines for appeals of the maximum allowable cost reimbursement to pharmacists set by pharmacy benefits managers.

Both the Department of Insurance and the Public Employee Benefits Authority report that this bill would have no expenditure impact on the general fund, federal funds, or other funds.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 20 TO CHAPTER 71, TITLE 38 SO AS TO PROVIDE PROCEDURES GOVERNING THE MAXIMUM ALLOWABLE COST REIMBURSEMENTS FOR GENERIC PRESCRIPTION DRUGS BY PHARMACY BENEFIT MANAGERS, TO PROVIDE NECESSARY DEFINITIONS, TO EXEMPT THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES IN THE PERFORMANCE OF ITS DUTIES IN ADMINISTERING MEDICAID UNDER TITLES XIX AND XXI OF THE SOCIAL SECURITY ACT, TO PROVIDE REQUIREMENTS FOR PLACING DRUGS ON MAXIMUM ALLOWABLE COST LISTS BY PHARMACY BENEFIT MANAGERS, AND TO PROVIDE VARIOUS REQUIREMENTS OF PHARMACY BENEFIT MANAGERS; TO PROVIDE CONTRACTS BETWEEN PHARMACIES AND PHARMACY BENEFIT MANAGERS THAT ARE ENTERED INTO, RENEWED, OR EXTENDED ON OR AFTER THE EFFECTIVE DATE OF THIS ACT; AND TO MAKE THE PROVISIONS OF THIS ACT EFFECTIVE JANUARY 1, 2016.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 71, Title 38 of the 1976 Code is amended by adding:

“Article 20

Pharmacy Benefits Managers

Section 38‑71‑2110. (A) As used in this article:

(1) ‘Claim’ means a request from a pharmacy or pharmacist to be reimbursed for the cost of filling or refilling a prescription for a drug or for providing a medical supply or device.

(2) ‘Insurer’ means an entity that provides health insurance coverage in this State as defined in Section 38‑71‑670(7) and Section 38‑71‑840(16).

(3) ‘Pharmacist’ has the same meaning given that term in Section 40‑43‑30(39).

(4) ‘Pharmacy’ has the same meaning given that term in Section 40‑43‑30(41).

(5) ‘Pharmacy benefit manager’ means an entity that contracts with pharmacists or pharmacies on behalf of an insurer, third party administrator, or the South Carolina Public Employee Benefit Authority to:

(a) process claims for prescription drugs or medical supplies or provide retail network management for pharmacies or pharmacists;

(b) pay pharmacies or pharmacists for prescription drugs or medical supplies; or

(c) negotiate rebates with manufacturers for drugs paid for or procured as described in this section.

(6) ‘List’ means the list of drugs for which a pharmacy benefit manager has established a maximum allowable cost.

(7) ‘Maximum allowable cost’ means the maximum amount that a pharmacy benefit manager will reimburse a pharmacist or pharmacy for the cost of a generic drug.

(8) ‘Network providers’ means those pharmacists and pharmacies who provide covered health care services or supplies to an insured or a member pursuant to a contract with a network plan to act as a participating provider.

(B) This article does not apply to the South Carolina Department of Health and Human Services in the performance of its duties in administering Medicaid under Titles XIX and XXI of the Social Security Act.

Section 38‑71‑2120. To place a drug on a maximum allowable cost list, a pharmacy benefit manager must ensure that the drug is:

(1) listed as ‘A’ or ‘B’ rated in the most recent version of the FDA’s Approved Drug Products with Therapeutic Equivalence Evaluations, also known as the Orange Book, or has an ‘NR’ or ‘NA’ rating or a similar rating by a nationally recognized reference;

(2) generally available for purchase by pharmacies in the State from national or regional wholesalers; and

(3) not obsolete.

Section 38‑71‑2130. A pharmacy benefit manager must:

(1) make available to each network provider at the beginning of the term of the network provider’s contract, and upon renewal of the contract, the sources utilized to determine the maximum allowable cost pricing;

(2) provide a process for network pharmacy providers to readily access the maximum allowable cost specific to that provider;

(3) review and update maximum allowable cost price information at least once every seven business days to reflect any modification of maximum allowable cost pricing; and

(4) ensure that dispensing fees are not included in the calculation of maximum allowable cost.

Section 38‑71‑2140. (A) A pharmacy benefit manager must establish a process by which a contracted pharmacy can appeal the provider’s reimbursement for a drug subject to maximum allowable cost pricing. A contracted pharmacy has ten calendar days after the applicable fill date to appeal a maximum allowable cost if the reimbursement for the drug is less than the net amount that the network provider paid to the supplier of the drug. A pharmacy benefit manager must respond to a challenge within ten calendar days of the contracted pharmacy making the claim for which appeal has been submitted.

(B) At the beginning of the term of the network provider’s contract, and upon renewal, a pharmacy benefit manager must provide to network providers a telephone number at which a network provider can contact the pharmacy benefit manager to process an appeal.

(C) If an appeal is denied, the pharmacy benefit manager must provide the reason for the denial and the name and the national drug code number from national or regional wholesalers operating in South Carolina.

(D) If an appeal is sustained, the pharmacy benefit manager must make an adjustment in the drug price effective the date the challenge is resolved and make the adjustment applicable to all similarly situated network pharmacy providers, as determined by the managed care organization or pharmacy benefit manager, as appropriate.”

SECTION 2. This article applies to contracts between pharmacies and pharmacy benefit managers that are entered into, renewed, or extended on or after the effective date of this act.

SECTION 3. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 4. The provisions of this act take effect on January 1, 2016.

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