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SECRETARY OF COMMERCE

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COMMISSIONER,
ARKANSAS INSURANCE
DEPARTMENT

BULLETIN NO. 4-2024

TO: All Licensed Pharmacy Benefits Managers
FROM: Arkansas Insurance Department – PBM Division
DATE: April 24, 2024
RE: PBM Reimbursement(s) Below NADAC Amounts

The Arkansas Insurance Commissioner (“Commissioner”) issues this advisory Bulletin to all Arkansas Insurance Department (“AID”) licensed pharmacy benefits managers (“PBMs”) related to PBM reimbursements to pharmacies below current NADAC pricing amounts.

Over the past year to year and a half, AID has received, processed and adjusted, on the average, approximately 1,000 to 1,500 claims a month from pharmacies complaining of reimbursements by PBMs below the National Average Drug Acquisition Cost (“NADAC”) rate at the time of drug claim submission, on a per prescription basis. Historically, after the Arkansas Pharmacy Benefits Managers Licensure Act (“PBMLA”) was amended several years ago to now mandate a NADAC “safety net” reimbursement minimum from PBMs, AID has simply processed complaints from pharmacies about payments falling below NADAC amounts and required the PBM to make a corrected upward adjustment for the complaining pharmacy. AID has not sought additional fines or penalties against the offending PBM on a routine basis.

The Commissioner reminds the AID licensed PBM industry of Ark. Code Ann. § 23-92-506(b)(5) in the PBMLA which states:

- (b) A pharmacy benefits managers or representative of a pharmacy benefits managers shall not:
- (5) (A) *Pay or reimburse a pharmacy or pharmacist for the ingredient drug product component of pharmacist services less than the national average drug acquisition cost or, if the national average drug acquisition cost is unavailable, the wholesale acquisition cost. (emphasis added)*

As is apparent from the above code provision, it is blatant violation of the PBMLA for a PBM to reimburse a pharmacy less than the current NADAC amount at the time of the claim submission by the pharmacy, if a NADAC price is available, regardless of what the amount is, or how insignificant the difference is. These reimbursement violations are causing both the adversely affected pharmacies and AID to later spend time, resources, and issue formal correspondence with the offending PBM to later correct the amount, post claim, after a complaint is received and processed by AID. These actions are absolutely unnecessary if the PBM had earlier applied correct NADAC reimbursement minimums during the claim process. These violations are occurring by multiple PBMs on a regular basis. Therefore, to encourage PBMs to improve their systems to at least provide correct and accurate NADAC minimum amounts at the time of drug claim submission by the pharmacy, and to help reduce AID processing of the rather large number of NADAC

complaints we are receiving, AID will begin applying penalties against PBMs violating such NADAC standards, for such violations on a per prescription basis, after the end of the second quarter of this year (on and after June 30, 2024).

PBMs are encouraged to review Ark. Code Ann. § 23-92-508(c). Under that referenced penalty provision in the PBMLA, the Commissioner is authorized to impose a penalty of up to \$5,000.00 for a violation of the NADAC provisions in the PBMLA.

The Commissioner is aware that NADAC pricing is dynamic in nature and updated weekly by the Centers For Medicare and Medicaid Services (“CMS”) and therefore it may be that a PBM in its system, for some reason, does not capture the current, weekly updated NADAC price. Secondly, the Commissioner is also aware that there may be a compliance implementation issue that for many nationally operating PBMs that have implemented national processing systems, covering multiple States, the PBM may not have necessarily created an Arkansas-specific one, for Arkansas safety-net minimums. Even if such implementation difficulties exist, or others, the PBM is still nonetheless required to follow Arkansas law. Improvements to reduce NADAC reimbursement underpayments in Arkansas are now necessary. These will help reduce pharmacy complaints and AID processing of NADAC complaints.

For questions related to this Bulletin, please direct all inquiries to Booth Rand, General Counsel at AID, at (501) 371-2820 or email insurance.legal@arkansas.gov.



Alan McClain
Arkansas Insurance Commissioner

4/23/24

Date