

Dear Senators LODGE, Broadsword, Bock, and
Representatives MCGEACHIN, Bilbao, Rusche:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the Department of Health and Welfare - Medicaid Basic Plan Benefits:
IDAPA 16.03.09 - Rules Pertaining To The Medicaid Basic Plan Benefits (Docket No. 16-0309-1101).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research and Legislation no later than fourteen (14) days after receipt of the rules analysis from Legislative Services. The final date to call a meeting on the enclosed rules is no later than 12/23/2011. If a meeting is called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules analysis from Legislative Services. The final date to hold a meeting on the enclosed rules is 01/24/2012.

The germane joint subcommittee may request a statement of economic impact with respect to a proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement, and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has been held.

To notify Research and Legislation, call 334-4845, or send a written request to the address or FAX number indicated on the memorandum enclosed.



Jeff Youtz
Director

Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Health & Welfare Committee and the House Health & Welfare Committee

FROM: Legislative Research Analyst - Ryan Bush

DATE: December 06, 2011

SUBJECT: Department of Health and Welfare - Medicaid Basic Plan Benefits

IDAPA 16.03.09 - Rules Pertaining To The Medicaid Basic Plan Benefits (Docket No. 16-0309-1101)

The Department of Health and Welfare submits notice of temporary and proposed rulemaking at IDAPA 16.03.09 - Rules Pertaining To The Medicaid Basic Plan Benefits. The Department states that the proposed rulemaking provides for the administration and policies needed to implement the reimbursement to pharmacies required by House Bill No. 260, as codified in Section 56-209g, Idaho Code. The Department further states that obsolete language is being removed and the structure for dispensing fees is being added based on a tiered structure. We note one minor difference between the proposed rulemaking and Idaho Code. The Department uses Average Actual Acquisition Cost (AAAC) in the proposed rulemaking when defining Estimated Acquisition Cost (EAC). Section 56-209g uses Average Acquisition Cost (AAC) when defining EAC. We contacted the Department, and the Department stated that there is no difference between the two terms. AAAC is used only as a clarifier.

The Department states that negotiated rulemaking was conducted and that notice of negotiated rulemaking was published in the May 4, 2011, Idaho Administrative Bulletin, Vol. 11-5, page 62. The Department states that the state general fund savings associated with this rulemaking are estimated to be \$2,000,000.

The proposed rule appears to be within the authority granted to the Department in Sections 56-202(b) and 56-209g, Idaho Code.

cc: Department of Health and Welfare - Medicaid Basic Plan Benefits
Tamara Prisock
Robert Kellerman

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.09 - MEDICAID BASIC PLAN BENEFITS

DOCKET NO. 16-0309-1101

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is September 28, 2011.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Sections 56-202(b), 56-203(7), 56-203(9), 56-209(g), 56-250 through 56-257, and 56-260 through 56-266, Idaho Code, as amended in House Bill 260.

PUBLIC HEARING SCHEDULE: Public hearings concerning this rulemaking will be held as follows:

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Under Section 56-209(g), Idaho Code, the Department is required to pay the lesser of the pharmacy provider's lowest charge to the general public for a drug or the estimated acquisition cost (EAC), plus a dispensing fee. These changes provide for the administration and policies needed to implement the reimbursement to pharmacies required in statute. Obsolete language is being removed and the structure for dispensing fees is being added based on a tiered structure.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate to comply with deadlines in amendments to governing law or federal programs, in particular, House Bill 260 (2011).

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: NA

FISCAL IMPACT: The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

The state general fund savings associated with this rulemaking are estimated to be \$2,000,000.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was conducted to implement Section 8 of HB 260 regarding pharmacy drug acquisition costs and dispensing fees. The notice of negotiated rulemaking was published in the [May 4, 2011, Idaho Administrative Bulletin, Vol. 11-5, page 62](#).

INCORPORATION BY REFERENCE: No materials are being incorporated by reference into these rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Robert Kellerman at (208) 364-1994.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before December 28, 2011.

DATED this 8th day of November, 2011.

Tamara Prisock
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THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT OF DOCKET NO. 16-0309-1101

665. PRESCRIPTION DRUGS: PROVIDER REIMBURSEMENT.

~~01.~~ ~~Nonpayment of Prescriptions.~~ Prescriptions not filled in accordance with the provisions of Subsection 664.02 of these rules will be subject to nonpayment or recoupment. ~~(3-30-07)~~

~~02.~~ ~~Payment Procedures.~~ The following protocol must be followed for proper reimbursement. ~~(3-30-07)~~(9-28-11)T

~~a~~01. **Filing Claims.** Reimbursement is restricted to those drugs supplied from labelers that are participating in the CMS Medicaid Drug Rebate Program. Pharmacists must file claims electronically with Department-approved software or by submitting the appropriate claim form to the fiscal contractor. Upon request, the contractor will provide pharmacies with a supply of claim forms. The form must include information described in the pharmacy guidelines issued by the Department. ~~(3-30-07)~~(9-28-11)T

~~b~~02. **Claim Form Review.** Each claim form may be subject to review by a contract claim examiner, a pharmaceutical consultant, or a medical consultant. (3-30-07)

~~e~~03. **Billed Charges.** A pharmacy's billed charges are not to exceed the usual and customary charges defined as the lowest charge by the provider to the general public for the same service including advertised specials. (3-30-07)

~~d~~04. **Reimbursement.** Reimbursement to pharmacies is limited to the lowest of the following: (3-30-07)

~~i~~a. Federal Upper Limit (FUL), as established by the Centers for Medicare and Medicaid Services (CMS) of the U.S. Department of Health and Human Services, plus the dispensing fee assigned by the Department; (3-30-07)

~~i~~b. State Maximum Allowable Cost (SMAC), as established by the Department, plus the assigned dispensing fee; (3-30-07)

~~i~~c. Estimated Acquisition Cost (EAC), ~~as established by the Department following negotiations with representatives of the Idaho pharmacy profession defined as an approximation of the net cost of the drug~~ defined as the Average Actual Acquisition Cost (AAAC), plus the assigned dispensing fee. In cases where no AAAC is available, reimbursement will be the Wholesale Acquisition Cost (WAC). WAC will mean the price, paid by a wholesaler for the drugs purchased from the wholesaler's supplier, typically the manufacturer of the drug as published by a recognized compendia of drug pricing on the last day of the calendar quarter that corresponds to the calendar quarter; or ~~(4-7-11)~~(9-28-11)T

~~i~~d. The pharmacy's ~~usual and customary charge to the general public~~ billed charges as defined in Subsection 665.02~~3.c.~~ of this rule. ~~(3-30-07)~~(9-28-11)T

e05. Dispensing Fees. Only one (1) dispensing fee per month will be allowed for the dispensing of each maintenance drug to any participant as an outpatient or a resident in a care facility except: ~~(3-30-07)~~(9-28-11)T

#a. Multiple dispensing of topical and injectable medication when dispensed in manufacturer's original package sizes, unless evidence exists, as determined by the Department, that the quantity dispensed does not relate to the prescriber's order; (3-30-07)

#b. Multiple dispensing of oral liquid maintenance medication if a reasonable quantity, as determined by the Department, is dispensed at each filling; (3-30-07)

#c. Multiple dispensing of tablets or capsules if the quantity needed for a thirty-four (34) day supply is excessively large or unduly expensive, in the judgment of the Department; or (3-30-07)

#d. When the dose is being titrated for maximum therapeutic response with a minimum of adverse effects. (3-30-07)

06. Claims Volume Survey for Tier-Based Dispensing Fees. The Department will survey pharmacy providers to establish a dispensing fee for each provider. The dispensing fees will be paid based on the provider's total annual claims volume. The provider must return the claims volume survey to the Department no later than May 31st each year. Pharmacy providers who do not complete the annual claims volume survey will be assigned the lowest dispensing fee starting on July 1st until the next annual survey is completed. Based upon the annual claims volume of the enrolled pharmacy, the dispensing fee is provided online at: <http://healthandwelfare.idaho.gov/LinkClick.aspx?fileticket=iJDsiQavFLc%3d&tabid=119&mid=1111>. (9-28-11)T

#07. Remittance Advice. Claims are processed by computer, and payments are made directly to the pharmacy or its designated bank through electronic claims transfer. A remittance advice with detailed information of each claim transaction will accompany each payment made by the Department. (3-30-07)

#08. Return of Drugs. Drugs dispensed in unit dose packaging as defined by IDAPA 27.01.01, "Rules of the Idaho State Board of Pharmacy," Subsection 156.05, must be returned to the dispensing pharmacy when the participant no longer uses the medication as follows: (3-30-07)

#a. A pharmacy provider using unit dose packaging must comply with IDAPA 27.01.01, "Rules of the Idaho State Board of Pharmacy," Subsection 156.05. (3-30-07)

#b. The pharmacy provider that receives the returned drugs must credit the Department the amount billed for the cost of the drug less the dispensing fee. (3-30-07)

#c. The pharmacy provider may receive a fee for acceptance of returned unused drugs. The value of the unused drug being returned must be cost effective as determined by the Department. (3-30-07)

039. Periodic State Cost Surveys. The Department will utilize periodic state cost surveys to obtain the most accurate pharmacy drug acquisition costs in establishing a pharmacy reimbursement fee schedule. Pharmacies participating in the Idaho Medicaid program are required to participate in these periodic state cost surveys by disclosing the costs of all drugs net of any special discounts or allowances. A pharmacy that is non-responsive to the periodic state cost surveys can be disenrolled as a Medicaid provider by the Department. ~~(4-7-11)~~(9-28-11)T

10. Cost Appeal Process. Cost appeals will be determined by the Department's process provided online at: <http://healthandwelfare.idaho.gov/LinkClick.aspx?fileticket=iJDsiQavFLc%3d&tabid=119&mid=1111>. (9-28-11)T