



Minnesota Department of
Human Services

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Health Care

Our Mission

The Minnesota Department of Human Services, working with many others, helps people meet their basic needs so they can live in dignity and achieve their highest potential.

Our Values

- We focus on people, not programs.
- We provide ladders up and safety nets for the people we serve.
- We work in partnership with others; we cannot do it alone.
- We are accountable for results, first to the people we serve, and ultimately to all Minnesotans.

We practice these shared values in an ethical environment where integrity, trustworthiness, responsibility, respect, justice, fairness and caring are of paramount importance.

Report to the Legislature

Pharmacy Report on DRA Impact

Laws of Minnesota 2007
Chapter 147, article 5, section 38

January 2008

I. Legislative Report Requirement

Minnesota Session Laws 2007, Chapter 147, Article 5, Section 38 states that the Commissioner of Human Services "report to the Legislature by January 15, 2008, on the fiscal impact of Deficit Reduction Act reforms on the Minnesota Medicaid pharmacy program, including but not limited to;

- (1) overall cost reductions to the Minnesota Medicaid pharmacy program as a result of the Deficit Reduction Act of 2005;
- (2) the impact of reforms on the federal upper limit on pharmacy reimbursement, and the amount that the dispensing fee for multiple-source generic drugs would have to be adjusted to offset any reductions resulting from federal upper limits implemented as a result of the Deficit Reduction Act of 2005;
- (3) the change in federal rebates received from pharmaceutical manufacturers as a result of Deficit Reduction Act reforms, and strategies that could be employed in administering the Medicaid drug formulary to compensate for lost manufacturer rebates;
- (4) a comparison of published federal upper limits and state maximum allowable cost (MAC) prices prior to and following implementation of the Deficit Reduction Act federal upper limit reforms;
- (5) the number of participating pharmacies in the program as of January 1, 2007, July 1, 2007, and November 1, 2007; and
- (6) the Minnesota Medicaid fee-for-service pharmacy program rate of generic dispensing before and after state implementation of Deficit Reduction Act of 2005 generic reimbursement reform."

II. Deficit Reduction Act of 2005

The Deficit Reduction Act of 2005, Title VI-Medicaid and SCHIP, Subtitle A-Medicaid, Chapter 1-Payment for Prescription Drugs, contains the following changes to that could affect the Minnesota Medicaid prescription drug program;

SEC. 6001. FEDERAL UPPER PAYMENT LIMIT FOR MULTIPLE SOURCE DRUGS AND OTHER DRUG PAYMENT PROVISIONS.

- (a) MODIFICATION OF FEDERAL UPPER LIMIT FOR MULTIPLE SOURCE DRUGS; DEFINITION OF MULTIPLE SOURCE DRUGS.-
- (b) DISCLOSURE OF PRICE INFORMATION TO STATES AND THE PUBLIC.-
- (c) DEFINITION OF AVERAGE MANUFACTURER PRICE.-
- (d) EXCLUSION OF SALES AT A NOMINAL PRICE FROM DETERMINATION OF BEST PRICE.-
- (e) RETAIL SURVEY PRICES; STATE PAYMENT AND UTILIZATION RATES; AND PERFORMANCE RANKINGS.-

SEC. 6002. COLLECTION AND SUBMISSION OF UTILIZATION DATA FOR CERTAIN PHYSICIAN ADMINISTERED DRUGS.

This section requires states to collect national drug code (NDC) data on all single source and the top twenty, by dollar volume, multi-source physician administered drugs.

SEC. 6003. IMPROVED REGULATION OF DRUGS SOLD UNDER A NEW DRUG APPLICATION APPROVED UNDER SECTION 505(c) OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT.

This section requires drug manufacturers to report the lowest price for any drug of a manufacturer that is sold under a new drug application approved under the Federal Food,

Drug and Cosmetic Act. This clarifies that "authorized generics" prices must be included in the reporting of the lowest price for the innovator drug.

SEC. 6004 CHILDREN'S HOSPITAL PARTICIPATION IN SECTION 340B DRUG DISCOUNT PROGRAM.

This section clarifies the qualification requirements of a 340B children's hospital.

III. Implementation of the Deficit Reduction Act of 2005

On December 21, 2007, the Minnesota Department of Human Services received notice from Centers for Medicaid and Medicare Services (CMS) that the United States District Court for the District of Columbia issued a preliminary injunction that enjoins CMS from implementing the final rule concerning Average Manufacturer Price (AMP) to the extent that it effects reimbursement rates for retail pharmacies under the Medicaid program. The order enjoins CMS from disclosing AMP data to certain individuals or entities, including States or their representatives.

As a result of this preliminary injunction, CMS did not post AMPs or Federal Upper Limits (FULs) on their website in December 2007, nor did they send states the AMPs and FULs that were to be implemented on February 1, 2008. Consequently, the schedule for states to implement the new FULs will be delayed until further notice. In addition, CMS has suspended the sending of monthly AMP/FUL files to the states.

IV Summary

With the preliminary suspension of the implementation of the *DRA of 2005* FUL rates, there is no fiscal impact to report in compliance with Minnesota Session Laws 2007, Chapter 147, Article 5, Section 38 (1)-(6). Although there is no fiscal impact to report, we report, in compliance with Section 38 (5), the number of pharmacies enrolled in the Minnesota Medicaid program;

January 1, 2007 = 1,381

July 1, 2007 = 1,478

November 1, 2007 = 1,518

The Minnesota Department of Human Services (DHS) fee-for-service Medicaid pharmacy program will continue using the state's maximum allowable cost (MAC) list to price multiple source generic products.

Once the preliminary suspension of the implementation of the *DRA of 2005* is lifted, DHS plans to continue using the Minnesota MAC program and not the federal FUL rates. As long as the pharmacy program keeps its cost of drugs assigned an FUL price within the annual aggregate FUL cost, the state may use a MAC program. Based on analysis of the last FUL tape received from CMS, our MAC program will meet the annual FUL aggregate. Therefore, DHS does not expect the *DRA of 2005* to affect reimbursement rates paid to Minnesota pharmacies.