

§4350. Prescription drug pricing; maximum allowable cost

1. Single maximum allowable cost list. A carrier, or a pharmacy benefits manager under contract with a carrier, shall use a single maximum allowable cost list to establish the maximum amount to be paid by a health plan to a pharmacy provider for a generic drug or a brand-name drug that has at least one generic alternative available. A carrier, or a pharmacy benefits manager under contract with a carrier, shall use the same maximum allowable cost list for each pharmacy provider. [PL 2019, c. 469, §8 (NEW); PL 2019, c. 469, §9 (AFF).]

2. Listing of prescription drug. A maximum allowable cost may be set for a prescription drug, or a prescription drug may be allowed to continue on a maximum allowable cost list, only if that prescription drug:

A. Is rated as "A" or "B" in the most recent version of the United States Food and Drug Administration's "Approved Drug Products with Therapeutic Equivalence Evaluations," also known as "the Orange Book," or an equivalent rating from a successor publication, or is rated as "NR" or "NA" or a similar rating by a nationally recognized pricing reference; and [PL 2019, c. 469, §8 (NEW); PL 2019, c. 469, §9 (AFF).]

B. Is not obsolete and is generally available for purchase in this State from a national or regional wholesale distributor by pharmacies having a contract with the pharmacy benefits manager. [PL 2019, c. 469, §8 (NEW); PL 2019, c. 469, §9 (AFF).]
[PL 2019, c. 469, §8 (NEW); PL 2019, c. 469, §9 (AFF).]

3. Changes to maximum allowable cost list. A carrier, or a pharmacy benefits manager under contract with a carrier, shall establish a process for removing a prescription drug from a maximum allowable cost list or modifying a maximum allowable cost for a prescription drug in a timely manner to remain consistent with changes to such costs and the availability of the drug in the national marketplace. [PL 2019, c. 469, §8 (NEW); PL 2019, c. 469, §9 (AFF).]

4. Disclosure. With regard to a pharmacy with which the carrier, or the pharmacy benefits manager under contract with a carrier, has entered into a contract, a carrier, or a pharmacy benefits manager under contract with a carrier, shall:

A. Upon request, disclose the sources used to establish the maximum allowable costs; [PL 2019, c. 469, §8 (NEW); PL 2019, c. 469, §9 (AFF).]

B. Provide a process for a pharmacy to readily obtain the maximum allowable payment available to that pharmacy under a maximum allowable cost list; and [PL 2019, c. 469, §8 (NEW); PL 2019, c. 469, §9 (AFF).]

C. At least once every 7 business days, review and update maximum allowable cost list information to reflect any modification of the maximum allowable payment available to a pharmacy under a maximum allowable cost list used by the carrier or the pharmacy benefits manager under contract with a carrier. [PL 2019, c. 469, §8 (NEW); PL 2019, c. 469, §9 (AFF).]
[PL 2019, c. 469, §8 (NEW); PL 2019, c. 469, §9 (AFF).]

5. Appeal procedure. A carrier, or a pharmacy benefits manager under contract with a carrier, shall provide a reasonable administrative appeal procedure, including a right to appeal that is limited to 14 days following the initial claim, to allow pharmacies with which the carrier or pharmacy benefits manager has a contract to challenge maximum allowable costs for a specified drug. [PL 2019, c. 469, §8 (NEW); PL 2019, c. 469, §9 (AFF).]

6. Resolution of appeals. A carrier, or a pharmacy benefits manager under contract with a carrier, shall respond to, investigate and resolve an appeal under subsection 5 within 14 days after the receipt of the appeal. The carrier or pharmacy benefits manager shall respond to an appeal as follows:

A. If the appeal is upheld, the carrier or pharmacy benefits manager shall make the appropriate adjustment in the maximum allowable cost and permit the challenging pharmacy or pharmacist to reverse and rebill the claim in question; or [PL 2019, c. 469, §8 (NEW); PL 2019, c. 469, §9 (AFF).]

B. If the appeal is denied, the carrier or pharmacy benefits manager shall provide the challenging pharmacy or pharmacist the national drug code from national or regional wholesalers of a comparable prescription drug that may be purchased at or below the maximum allowable cost. [PL 2019, c. 469, §8 (NEW); PL 2019, c. 469, §9 (AFF).]
[PL 2019, c. 469, §8 (NEW); PL 2019, c. 469, §9 (AFF).]

7. Average wholesale price; use of a prescription drug not on maximum allowable cost list.

A carrier, or a pharmacy benefits manager under contract with a carrier, shall use the average wholesale price to establish the maximum payment for a brand-name drug for which a generic equivalent is not available or a prescription drug not included on a maximum allowable cost list. In order to use the average wholesale price of a brand-name drug or prescription drug not included on a maximum allowable cost list, a carrier, or a pharmacy benefits manager under contract with a carrier, must use only one national drug pricing source during a calendar year, except that a carrier, or a pharmacy benefits manager under contract with a carrier, may use a different national drug pricing source if the original pricing source is no longer available. A carrier, or a pharmacy benefits manager under contract with a carrier, shall use the same national drug pricing source for each pharmacy provider and identify on its publicly accessible website the name of the national drug pricing source used to determine the average wholesale price of a prescription drug not included on the maximum allowable cost list.
[PL 2019, c. 469, §8 (NEW); PL 2019, c. 469, §9 (AFF).]

8. Payment. This subsection governs payments between a carrier or a carrier's pharmacy benefits manager and a pharmacy provider.

A. The amount paid by a carrier or a carrier's pharmacy benefits manager to a pharmacy provider under contract with the carrier or the carrier's pharmacy benefits manager for dispensing a prescription drug must be the ingredient cost plus the dispensing fee less any cost-sharing amount paid by a covered person. [PL 2019, c. 469, §8 (NEW); PL 2019, c. 469, §9 (AFF).]

B. The ingredient cost may not exceed the maximum allowable cost or average wholesale price, as applicable, and must be disclosed by the carrier's pharmacy benefits manager to the carrier. [PL 2019, c. 469, §8 (NEW); PL 2019, c. 469, §9 (AFF).]

C. Only the pharmacy provider that dispensed the prescription drug may retain the payment described in this subsection. [PL 2019, c. 469, §8 (NEW); PL 2019, c. 469, §9 (AFF).]

D. A pharmacy provider may not be denied payment or be subject to a reduced payment retroactively unless the original claim was submitted fraudulently or in error. [PL 2019, c. 469, §8 (NEW); PL 2019, c. 469, §9 (AFF).]

[PL 2019, c. 469, §8 (NEW); PL 2019, c. 469, §9 (AFF).]

SECTION HISTORY

PL 2019, c. 469, §8 (NEW). PL 2019, c. 469, §9 (AFF).

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