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TO: All Pharmacy Benefit Managers, insurers, and self-funded governmental plans offering health benefits coverage
FROM: Mark V. Afable, Commissioner of Insurance
SUBJECT: 2021 Wis. Act 9, New Law Update

The Office of the Commissioner of Insurance (OCI) is issuing this bulletin to ensure that pharmacy benefit managers (PBMs), disability insurers doing business in Wisconsin, and self-funded governmental plans providing prescription drug benefits are aware of 2021 Wis. Act 9, that was enacted March 26, 2021, and published on March 27, 2021.

This bulletin highlights certain provisions of the Act. This is not an exhaustive list nor a complete description of the new law. Insurers, PBMs, and governmental plans should carefully review the new law and this bulletin to determine which provisions apply to your company. It is each PBM and insurer's responsibility to ensure that its policy forms and procedures comply with the new law. To obtain the complete text of the statutes, you may contact the Revisor of Statutes Bureau or it may be reviewed on the web at <http://www.legis.state.wi.us/>.

Disclosures:

A disability insurance policy or self-insured health plan may not restrict or penalize a pharmacy from informing an enrollee in the policy or plan regarding the difference between the out-of-pocket cost under the policy or plan and the amount an individual would pay without using the health policy or plan.

This section was effective on the date after publication, March 28, 2021.

Drug Substitution

Wis. Stat. §632.861(4), establishes notice requirements for disability insurers, self-funded non-federal governmental plans, and PBMs regarding certain drug formulary changes or drug substitutions. Advance written notice is required to enrollees when a drug is removed from the formulary or the benefit tier of a covered drug is modified to a higher deductible, copayment, or coinsurance level.

This section is effective January 1, 2022.

Annual Reports:

Beginning on June 1, 2021, Wisconsin Statute § 632.865 (7) requires that every pharmacy benefit manager submit a report related to contracts held with pharmacies located in Wisconsin that provides the following information from the prior calendar year:

- The aggregate rebate amount that the pharmacy benefit manager received from all pharmaceutical manufacturers.
- Aggregate rebate amount retained but did to pass through to health benefit plan sponsors.
- The percentage of the aggregate rebate amount that is retained.

Pharmacy benefit managers shall use OCI Form No. OCI 26-906 (04/2021) regarding retained rebates consistent with Wis. Stat. §632.865 (7).

This section became effective on March 28, 2021.

Cost-Sharing Limitations:

Wisconsin Statute § 632.861 (3), restricts the amount an enrollee or insured is required to pay at the point of sale to the lower of the following:

- The cost-sharing amount for the prescription drug under the terms of the plan or policy, or
- The amount the enrollee or insured would pay without using any health plan of health insurance coverage.

This section becomes effective on June 30, 2021.

Audits of Pharmacies:

Wisconsin Statute § 632.865 (6), delineates procedures for a review of a pharmacy or pharmacist by or for a defined network plan, self-insured governmental health plan or pharmacy benefit manager that finances or reimburses the cost of health care services or prescription drugs. The law details the notice and scope of an audit and timeframes for the pharmacist or pharmacy to provide necessary documentation. The section requires the auditing entity to provide the pharmacy or pharmacist with results of the audit within 60 day after the on-site or desk audit.

The law addresses the confidentiality of the information obtained during an audit, the expectation of corporation with the auditors when performed in accordance with the statute, and limitations on adverse incentives for auditors. The audit provisions within this section do not apply to an investigative audit when there is credible allegation of fraud or willful misrepresentation.

This section becomes effective on June 30, 2021.

Licensure:

The law requires PBMs to obtain a license and be subject to OCI oversight. The type of license required is based upon the PBM's responsibilities. If the PBM solicits or collects premiums, effects coverage, or settles claims the PBM must obtain an Employee Benefit Plan Administrator license. Alternatively, if the PBM administers or manages the pharmacy benefits for an insurer or another entity that provides prescription drug benefits to Wisconsin residents and does not

collect premium or affect claims, the PBM must obtain a Pharmacy Benefit Manager license. The application and annual renewal fee for either license is \$100.

This section becomes effective on January 1, 2022.

Effective dates:

- March 28, 2021, Disclosures under Wis. Stat. § 632.861 (2).
- June 1, 2021, Annual reports due to OCI for calendar year 2020.
- June 30, 2021, Cost-sharing limitation under Wis. Stat. § 632.861 (3), providing the enrolled individual will pay the lowest cost of either the cost-sharing amount under the plan or the amount a person would pay without health insurance.
- June 30, 2021, Audits conducted under Wis. Stat § 632.865 (6), providing parameters of PBM audits of pharmacies.
- January 1, 2022, the remainder of the provisions contained in the Act.

Information about Act 9, including Transparency Reporting, FAQs and the PBM or EBPA licensing process can be found at: <https://oci.wi.gov/Pages/PBM.aspx>

Any questions concerning this bulletin should be directed to Sarah Smith at Sarah.Smith2@wisconsin.gov.