



Small Pharmacy Reimbursement Appeals

September 10, 2019



OFFICE of the
**INSURANCE
COMMISSIONER**
WASHINGTON STATE

- Beginning July 1, 2017, small pharmacies located in Washington State can appeal to the Office of the Insurance Commissioner (OIC) the reimbursement level offered by Pharmacy Benefit Manager (PBM) for generic drugs offered as part of a fully-insured health plan.
- The OIC's Small Pharmacy Reimbursement Appeals (SPRA) unit conducts a hearing when a small pharmacy or pharmacist disputes the decision of a PBM (RCW 19.340.100(6) and RCW 48.04).

The requirements to file an appeal

- Only small pharmacies can file an appeal to OIC, which are defined as a pharmacy with no more than 14 retail outlets in-state.
- The prescription must have been filled in Washington State.
- The customer must be covered by a fully insured, non-ERISA health plan.
- The prescription was for a generic, multi-source drug.
- The small pharmacy has completed the PBM reimbursement claim process and received a denial.
- The appeal is for the cost of the drug, not other fees.
- The person filing the appeal has been designated by the small pharmacy with the authority to file on their behalf.

How the appeals process works:

- Small Pharmacies are able to file appeals using OIC's on-line portal, by mail, or in-person.
- Registered Pharmacy Benefit Managers participate in hearing process using OIC's on-line portal.
- A small pharmacy appeal must include the following documents:
 - Documents provided by the PBM as part of their decision,
 - Invoice,
 - Maximum Allowable Cost (MAC) List,
 - PBM Determination,
 - Certification of Authority to File, and
 - Any additional document the pharmacy or pharmacist wants SPRA to consider.

Appeal timeline:

- The PBM must have a process for a pharmacy to appeal reimbursement issues. This PBM appeal process must be completed within 30 calendar days of a pharmacy request.
 - After 30 calendar days, if the pharmacy has not received a decision by the PBM, it is considered denied.
- The small pharmacy may appeal a PBM denial with the OIC within 30 calendar days of receiving the PBM decision.
- OIC must enter an order within 30 calendar days of receiving all relevant information from the parties to complete a hearing.
- Upon resolution of the dispute, the OIC provides a copy of the decision to both parties within 7 calendar days.

What if a party is not satisfied with a decision?

- Either party (small pharmacy or PBM) may request the OIC Hearings office review SPRA's decision.
- Either party may also pursue other judicial review of the OIC Hearings office decision.

What SPRA doesn't do:

- OIC does not have jurisdiction to hear ERISA plan, Medicare, or Medicaid appeals.
- OIC cannot address claim issues other than the cost of drug including dispensing fees.
- Claims that have not been submitted to the PBM for initial review.
- Clinical judgement or efficacy decisions.
- OIC is not a purchaser or payor in the claims process.

SPRA's authority

- SPRA does not have the authority to collect funds awarded as part of a decision.
- SPRA decision is binding on the Small Pharmacy or Pharmacist and they can pursue collection.
- OIC does have the authority to fine a PBM for non-payment.
 - If it is determined that a violation of the code has occurred a PBM may be required to pay a civil penalty (\$1,000/\$5,000).

Statistics as of September 9, 2019

65 “initial appeals” received by SPRA unit.

- 33 appeals dismissed for being ERISA or Medicare plans
- 12 appeals upheld (for Small Pharmacy)
- 15 appeals denied (for PBM)
- 3 appeals withdrawn by Small Pharmacy
- 2 appeals withdrawn for technical reasons

10 SPRA decisions reviewed by OIC Hearing unit.

- 6 dismissals
- 1 SPRA decision upheld
- 1 SPRA decision reversed
- 1 decision remanded for further consideration
- 1 hearing terminated

PSAO

- Pharmacy Services Administration Organizations (PSAO) are entities with which small pharmacies contract for administrative support functions
- The contract between a small pharmacy and PSAO is not a provider agreement and is not filed with OIC.
- PSAOs file appeals with PBM on behalf of pharmacies, with one appeal representing a batch of claims.
- This means that some claims are not appealed to the PBM and thus the pharmacy does not have a PBM decision to appeal to OIC.

ERISA Preemption of State PBM Regulation

- Majority of appeals are for ERISA health plans. State cannot intervene due to preemption [29 U.S.C. § 1144(a)].
- Small Pharmacies cannot determine the ERISA status of the claim before filing an appeal.
- Small pharmacies do not know who to contact for help when the issue involves an ERISA health plan.

Issues other than drug cost

- Dispensing fees
- PBM policies and practices
- Clinical judgement
- Auditing practices

Questions?

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