

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

HOUSE BILL HB2827

By: Calvey

AS INTRODUCED

An Act relating to prescription drugs; amending 63 O.S. 2001, Section 2550.4, which relates to nonformulary prescription drugs; clarifying language; amending 63 O.S. 2001, Section 5030.3, which relates to the Medicaid Drug Utilization Review Board; clarifying reference; amending 15 O.S. 2001, Section 756.1, which relates to the Consumer Protection Act; clarifying references; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 63 O.S. 2001, Section 2550.4, is amended to read as follows:

Section 2550.4 A. A managed care plan that has a closed formulary or that requires prior authorization to obtain certain drugs shall approve or disapprove ~~a provider's or a covered person's~~ the request of a provider or a covered person for a nonformulary drug or a drug that requires prior authorization within twenty-four (24) hours of receipt of such request.

B. If the managed care plan does not render a decision within twenty-four (24) hours, the provider or covered person shall be entitled to a seventy-two-hour supply of the drug. The managed care plan shall then approve or disapprove the request for a nonformulary drug or prior authorized drug within the additional seventy-two-hour period.

C. Failure of the managed care plan to respond within the subsequently allowed seventy-two-hour period shall be deemed as approval of the request for the nonformulary drug or prior

authorized drug; provided, however, the approval shall be subject to the terms of the managed care plan's drug formulary; ~~provided further, the.~~ The purchase of the approved drug shall be at no additional cost to the covered person beyond what the covered person would otherwise pay for a prescription pursuant to the managed care plan.

D. All providers and covered persons in a managed care plan shall be provided with a copy of the plan's drug prior authorization process upon initial contracting or enrollment and at the time of enactment of any subsequent changes to the process.

SECTION 2. AMENDATORY 63 O.S. 2001, Section 5030.3, is amended to read as follows:

Section 5030.3 A. The Medicaid Drug Utilization Review Board shall have the power and duty to:

1. Advise and make recommendations regarding rules promulgated by the Oklahoma Health Care Authority Board to implement the provisions of ~~this act~~ Section 5030.1 through 5030.5 of this title;

2. Oversee the development, implementation and assessment of a Medicaid retrospective and prospective drug utilization review program, including making recommendations regarding contractual agreements of the Oklahoma Health Care Authority with any entity involved in processing and reviewing Medicaid drug profiles for the drug utilization review program in accordance with the provisions of this act;

3. Develop and apply the criteria and standards to be used in retrospective and prospective drug utilization review. The criteria and standards shall be based on the compendia and federal Food and Drug Act approved labeling, and shall be developed with professional input;

4. Provide a period for public comment on each meeting agenda. As necessary, the Medicaid Drug Utilization Review Board may include a public hearing as part of a meeting agenda to solicit public

comment regarding proposed changes in the prior authorization program and the retrospective and prospective drug utilization review processes. Notice of proposed changes to the prior authorization status of a drug or drugs shall be included in the monthly meeting agenda at least thirty (30) days prior to the consideration or recommendation of any proposed changes in prior authorization by the Medicaid Drug Utilization Review Board;

5. Establish provisions to timely reassess and, as necessary, revise the retrospective and prospective drug utilization review process;

6. Make recommendations regarding the prior authorization of prescription drugs pursuant to the provisions of Section 5 of this act; and

7. Provide members of the provider community with educational opportunities related to the clinical appropriateness of prescription drugs.

B. Any party aggrieved by a decision of the Oklahoma Health Care Authority Board or the Administrator of the Oklahoma Health Care Authority, pursuant to a recommendation of the Medicaid Drug Utilization Review Board, shall be entitled to an administrative hearing before the Oklahoma Health Care Authority Board pursuant to the provisions of the Administrative Procedures Act.

SECTION 3. AMENDATORY 15 O.S. 2001, Section 756.1, is amended to read as follows:

Section 756.1 A. The Attorney General or a district attorney may bring an action:

1. To obtain a declaratory judgment that an act or practice violates the Consumer Protection Act;

2. To enjoin, or to obtain a restraining order against a person who has violated, is violating, or is likely to violate the Consumer Protection Act;

3. To recover actual damages and, in the case of unconscionable conduct, penalties as provided by this act, on behalf of an aggrieved consumer, in an individual action only, for violation of the Consumer Protection Act; or

4. To recover reasonable expenses and investigation fees.

B. In lieu of instigating or continuing an action or proceeding, the Attorney General or a district attorney may accept a consent judgment with respect to any act or practice declared to be a violation of the Consumer Protection Act. Such a consent judgment shall provide for the discontinuance by the person entering the same of any act or practice declared to be a violation of the Consumer Protection Act, and it may include a stipulation for the payment by ~~such~~ the person of reasonable expenses and investigation fees incurred by the Attorney General or a district attorney. The consent judgment also may include a stipulation for restitution to be made by ~~such~~ the person to consumers of money, property, or other things received from such consumers in connection with a violation of this act and also may include a stipulation for specific performance. Any consent judgment entered into pursuant to this section shall not be deemed to admit the violation, unless it does so by its terms. Before any consent judgment entered into pursuant to this section shall be effective, it must be approved by the district court and an entry made thereof in the manner required for making an entry of judgment. Once such approval is received, any breach of the conditions of such consent judgment shall be treated as a violation of a court order, and shall be subject to all the penalties provided by law therefor.

C. In any action brought by the Attorney General or a district attorney, the court may:

1. Make such orders or judgments as may be necessary to prevent the use or employment by a person of any practice declared to be a violation of the Consumer Protection Act;

2. Make such orders or judgments as may be necessary to compensate any person for damages sustained;

3. Make such orders or judgments as may be necessary to carry out a transaction in accordance with consumers' reasonable expectations;

4. Appoint a master or receiver or order sequestration of assets to prevent the use or enjoyment of proceeds derived through illegal means and assess the expenses of a master or receiver against the defendant;

5. Revoke any license or certificate authorizing that person to engage in business in this state;

6. Enjoin any person from engaging in business in this state;
or

7. Grant other appropriate relief.

D. When an action is filed under the Consumer Protection Act by a district attorney or the Attorney General, no action seeking an injunction or declaratory judgment shall be filed in any other county or district in this state based upon the same transaction or occurrence, series of transactions or occurrences, or allegations which form the basis of the first action filed.

SECTION 4. This act shall become effective November 1, 2002.

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