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**TITLE 405 OFFICE OF THE SECRETARY OF
FAMILY AND SOCIAL SERVICES**

Proposed Rule
LSA Document #01-303

DIGEST

Amends 405 IAC 5-24-4 to add a state maximum allowable cost schedule to the Medicaid reimbursement methodology for legend drugs. Effective 30 days after filing with the secretary of state.

405 IAC 5-24-4

SECTION 1. 405 IAC 5-24-4, AS AMENDED AT 25 IR 60, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

405 IAC 5-24-4 Reimbursement for legend drugs

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2

Affected: IC 12-13-7-3; IC 12-15

Sec. 4. (a) The office shall reimburse pharmacy providers for covered legend drugs at the lowest of the following:
(1) The estimated acquisition cost (EAC) of the drug as of the date of dispensing, plus any applicable Medicaid dispensing fee.

(2) The maximum allowable cost (MAC) of the drug as determined by the Health Care Financing Administration under 42 CFR 447.332 as of the date of dispensing, plus any applicable Medicaid dispensing fee.

(3) The state maximum allowable cost (MAC) of the drug as determined by the office as of the date of dispensing, plus any applicable Medicaid dispensing fee.

~~(3)~~ (4) The provider's submitted charge, representing the provider's usual and customary charge for the drug, as of the date of dispensing.

(b) For purposes of this section, the Indiana Medicaid EAC is eighty-seven percent (87%) of the average wholesale price for each National Drug Code according to the Medicaid contractor's drug database file.

(c) The state MAC is equal to the average actual acquisition cost per drug adjusted by a multiplier of at least 1.0. The actual acquisition cost will be determined using pharmacy invoices and other information that the office determines is necessary. The purpose of the multiplier is to ensure that the applicable state MAC rate is sufficient to allow reasonable access by providers to the drug at or below the established state MAC rate.

(d) OMPP will review state MAC rates on an ongoing basis, and adjust the rates as necessary to reflect prevailing market conditions and ensure reasonable access by providers to drugs at or below the applicable state MAC rate.

(e) Pharmacies and providers that are enrolled in the Indiana health coverage programs (IHCP) are required, as a condition of participation, to make available and submit to the OMPP or its designee acquisition cost information, product availability information, or other information deemed necessary by the OMPP for the efficient operation of the pharmacy benefit within the IHCP in the format requested by the OMPP or its designee. Providers will not be reimbursed for this information and will submit information to the OMPP or its designee within thirty (30) days following a request for such information unless the OMPP or its designee grants an extension upon written request of the pharmacy or provider. (Office of the Secretary of Family and Social

Services; 405 IAC 5-24-4; filed Jul 25, 1997, 4:00 p.m.: 20 IR 3345; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Aug 29, 2001, 9:50 a.m.: 25 IR 60 [NOTE: On October 9, 2001, the Marion Superior Court issued an Order in Cause No. 49D05-0109-CP-1480, enjoining the Family and Social Services Administration from implementing LSA Document #01-22(F), published at 25 IR 60.]

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on December 27, 2001 at 9:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room C, Indianapolis, Indiana the Office of the Secretary of Family and Social Services will hold a public hearing on proposed amendments to the reimbursement methodology for legend drugs reimbursed by the Indiana Medicaid program.

In accordance with the public notice requirements established at 42 CFR 447.205, the Indiana Family and Social Services Administration publishes this notice of proposed amendments to the Indiana Health Coverage programs ("Medicaid") reimbursement methodology for covered legend drugs.

The proposed amendments add an additional payment limitation for legend drugs reimbursed by the Medicaid program. Currently, Medicaid reimburses at the lower of:

- (1) The estimated acquisition cost of the drug as of the date of dispensing, plus any applicable Medicaid dispensing fee;
- (2) The maximum allowable cost (MAC) of the drug as determined by the Centers for Medicare and Medicaid Services (formerly the Health Care Financing Administration) under 42 CFR 447.332 as of the date of dispensing, plus any applicable Medicaid dispensing fee;
- (3) The provider's submitted charge, representing the provider's usual and customary charge for the drug, as of the date of dispensing.

This change will add a fourth limitation: The state maximum allowable cost (MAC) of the drug as determined by the office as of the date of dispensing, plus any applicable dispensing fee.

The Office of Medicaid Policy and Planning (OMPP) has developed a State MAC fee schedule as required by Public Law 291-2001, Section 155 as enacted by the 2001 Indiana General Assembly. The State MAC is equal to the average acquisition cost per drug, increased by a multiplier of at least 1.0. The OMPP will adjust the State MAC limits as necessary to comport with changes in product availability.

The adoption of the State MAC, as described above, is estimated to decrease payments for covered legend drugs provided by pharmacies by approximately \$20 million annually. This change is being made in response to Public Law 291-2001 and the rapidly escalating expenditures for Medicaid covered legend drugs and as another in a series of cost containment initiatives that are intended to assist the agency to cover increasing costs in the Medicaid program that otherwise would exceed available appropriations. The change in reimbursement methodology will be effective after approval by the Centers for Medicare and Medicaid Services of the state plan amendments and the completion of changes to the Indiana Administrative Code.

Copies of this notice and the proposed rule will be available for public review by contacting the Director of the local office of the Division of Family and Children, except in Marion County. The inspection material will be available for public viewing in Marion County at the Office of Medicaid Policy and Planning, 402 West Washington Street, Room W382, and will be available from 8:30 a.m. to 4:30 p.m., Monday through Friday. Copies of this notice, the proposed rule, and the pending Medicaid State Plan Amendment are now available on the Internet at www.mslicindy.com/pharmacy. Interested parties without Internet access may obtain copies by contacting Myers and Stauffer at (317) 846-9521 or (800) 877-6927. Written comments concerning these proposed amendments should be directed to: Marc Shirley, 402 West Washington Street, Rm. W382, P.O. Box 7083, Indianapolis, Indiana 46207-7083. Correspondence should be identified in the following manner: "COMMENTS RE: PROPOSED RULE FOR THE STATE DRUG MAXIMUM ALLOWABLE COST (MAC), LSA DOCUMENT 01-303." The written comments may be reviewed by contacting OMPP and the above address.

Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W451 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

John Hamilton
Secretary
Office of the Secretary of Family and Social Services