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

**Proposed Rule**  
LSA Document #01-373

**DIGEST**

Amends 405 IAC 6-2-3, 405 IAC 6-2-5, 405 IAC 6-2-9, 405 IAC 6-2-12, 405 IAC 6-2-14, 405 IAC 6-2-18, 405 IAC 6-2-20, 405 IAC 6-2-21, 405 IAC 6-3-2, 405 IAC 6-3-3, 405 IAC 6-4-2, 405 IAC 6-5-1, 405 IAC 6-5-2, 405 IAC 6-5-3, 405 IAC 6-5-4, 405 IAC 6-5-5, 405 IAC 6-5-6, 405 IAC 6-6-2, 405 IAC 6-6-3, and 405 IAC 6-6-4 concerning provisions affecting applicants, enrollees, eligibility and enrollment requirements, benefits, and policy for the Indiana prescription drug program. Adds 405 IAC 6-2-5.3, 405 IAC 6-2-5.5, 405 IAC 6-2-12.5, 405 IAC 6-2-16.5, 405 IAC 6-2-20.5, 405 IAC 6-2-22.5, 405 IAC 6-8, and 405 IAC 6-9 concerning provisions that will set forth procedures for point of service processing and provider claims, payments, overpayments, and appeals for the Indiana prescription drug program. Effective 30 days after filing with the secretary of state.

<b>405 IAC 6-2-3</b>	<b>405 IAC 6-3-2</b>
<b>405 IAC 6-2-5</b>	<b>405 IAC 6-3-3</b>
<b>405 IAC 6-2-5.3</b>	<b>405 IAC 6-4-2</b>
<b>405 IAC 6-2-5.5</b>	<b>405 IAC 6-5-1</b>
<b>405 IAC 6-2-9</b>	<b>405 IAC 6-5-2</b>
<b>405 IAC 6-2-12</b>	<b>405 IAC 6-5-3</b>
<b>405 IAC 6-2-12.5</b>	<b>405 IAC 6-5-4</b>
<b>405 IAC 6-2-14</b>	<b>405 IAC 6-5-5</b>
<b>405 IAC 6-2-16.5</b>	<b>405 IAC 6-5-6</b>
<b>405 IAC 6-2-18</b>	<b>405 IAC 6-6-2</b>
<b>405 IAC 6-2-20</b>	<b>405 IAC 6-6-3</b>
<b>405 IAC 6-2-20.5</b>	<b>405 IAC 6-6-4</b>
<b>405 IAC 6-2-21</b>	<b>405 IAC 6-8</b>
<b>405 IAC 6-2-22.5</b>	<b>405 IAC 6-9</b>

SECTION 1. 405 IAC 6-2-3 IS AMENDED TO READ AS FOLLOWS:

**405 IAC 6-2-3 "Benefit period" defined**

**Authority:** IC 12-10-16-5

**Affected:** IC 12-10-16

Sec. 3. "Benefit period" means a specified time frame during which an enrollee accrues **or expends** the cost of prescription drugs. The benefit periods are specified in 405 IAC 6-5-3. (*Office of the Secretary of Family and Social Services; 405 IAC 6-2-3; filed Mar 8, 2001, 11:19 a.m.: 24 IR 2456*)

SECTION 2. 405 IAC 6-2-5 IS AMENDED TO READ AS FOLLOWS:

**405 IAC 6-2-5 "Complete application" defined**

**Authority:** IC 12-10-16-5

**Affected:** IC 12-10-16

Sec. 5. "Complete application" means an application which includes the following information about the applicant

and applicant's spouse, if applicable:

- (1) Name.
- (2) Address **of domicile**.
- (3) Date of birth.
- (4) Social Security number.**
- (5) Marital status.**
- ~~(4)~~ **(6)** Whether the ~~person~~ **applicant** had health insurance **with a prescription drug benefit** in the past ~~six (6)~~ **months, year**.
- ~~(5)~~ **(7)** Whether the ~~person~~ **applicant** **currently** has insurance that includes a prescription drug benefit.
- ~~(6)~~ **(8)** Whether the ~~person~~ **applicant** is on Medicaid, **including Medicaid with a spend-down**.
- ~~(7)~~ **(9)** Whether the ~~person~~ **applicant** has ~~lived~~ **resided** in Indiana for at least ninety (90) days in the past twelve (12) months.
- ~~(8)~~ **(10)** Proof of income.
- ~~(9)~~ **(11)** Signature.

*(Office of the Secretary of Family and Social Services; 405 IAC 6-2-5; filed Mar 8, 2001, 11:19 a.m.: 24 IR 2457)*

SECTION 3. 405 IAC 6-2-5.3 IS ADDED TO READ AS FOLLOWS:

**405 IAC 6-2-5.3 "Complete claim" defined**

Authority: IC 12-10-16-5

Affected: IC 12-10-16

Sec. 5.3. "Complete claim" means a claim submitted by a provider for processing that contains the enrollee's name and for each drug listed all of the following information:

- (1) The day the drug was dispensed.
- (2) The corresponding National Drug Code (NDC) number.
- (3) The identification of prescribing physician.
- (4) The name and dosage of drug.
- (5) The provider's selling price in accordance with 405 IAC 6-8-3.
- (6) If discounts are given, the actual price enrollee paid for the drug.

*(Office of the Secretary of Family and Social Services; 405 IAC 6-2-5.3)*

SECTION 4. 405 IAC 6-2-5.5 IS ADDED TO READ AS FOLLOWS:

**405 IAC 6-2-5.5 "Domicile" defined**

Authority: IC 12-10-16-5

Affected: IC 12-10-16

Sec. 5.5. "Domicile" means the applicant's true, fixed, principal, and permanent home. *(Office of the Secretary of Family and Social Services; 405 IAC 6-2-5.5)*

SECTION 5. 405 IAC 6-2-9 IS AMENDED TO READ AS FOLLOWS:

**405 IAC 6-2-9 "Family" defined**

Authority: IC 12-10-16-5

Affected: IC 12-10-16

Sec. 9. "Family" means the applicant, spouse, and any child who ~~live~~ **reside** in the same residence. *(Office of the Secretary of Family and Social Services; 405 IAC 6-2-9; filed Mar 8, 2001, 11:19 a.m.: 24 IR 2457)*

SECTION 6. 405 IAC 6-2-12 IS AMENDED TO READ AS FOLLOWS:

**405 IAC 6-2-12 "Health insurance with a prescription drug benefit" defined**

Authority: IC 12-10-16-5

Affected: IC 12-10-16

Sec. 12. "Health insurance with a prescription drug benefit" means any contract with an insurance company or organization approved or recognized by the Indiana Department of Insurance, under which an individual receives health benefits, including a prescription drug benefit. This term includes Medicaid and veteran's benefits. A prescription discount ~~and~~ offered by an insurance company, **department, manufacturer, provider,** or organization is not considered to be a prescription drug **insurance** benefit. (*Office of the Secretary of Family and Social Services; 405 IAC 6-2-12; filed Mar 8, 2001, 11:19 a.m.: 24 IR 2457*)

SECTION 7. 405 IAC 6-2-12.5 IS ADDED TO READ AS FOLLOWS:

**405 IAC 6-2-12.5 "Income" defined**

**Authority:** IC 12-10-16-5

**Affected:** IC 12-10-16

**Sec. 12.5. "Income" means the amount of money or its equivalent received in exchange for or as a result of labor or services, from the sale of goods or property or as profits from financial investments.** (*Office of the Secretary of Family and Social Services; 405 IAC 6-2-12.5*)

SECTION 8. 405 IAC 6-2-14 IS AMENDED TO READ AS FOLLOWS:

**405 IAC 6-2-14 "Net income" defined**

**Authority:** IC 12-10-16-5

**Affected:** IC 12-10-16

Sec. 14. "Net income" means the earned **income minus tax deductions, tax exemptions, and other tax reductions,** and unearned income **minus Medicare premiums** that an applicant and an applicant's family receives, calculated on a monthly basis. (*Office of the Secretary of Family and Social Services; 405 IAC 6-2-14; filed Mar 8, 2001, 11:19 a.m.: 24 IR 2457*)

SECTION 9. 405 IAC 6-2-16.5 IS ADDED TO READ AS FOLLOWS:

**405 IAC 6-2-16.5 "Point of service" defined**

**Authority:** IC 12-10-16-5

**Affected:** IC 12-10-16

**Sec. 16.5. "Point of service" means receiving the program benefit at the time of purchase of the prescription drugs.** (*Office of the Secretary of Family and Social Services; 405 IAC 6-2-16.5*)

SECTION 10. 405 IAC 6-2-18 IS AMENDED TO READ AS FOLLOWS:

**405 IAC 6-2-18 "Prescription printout" defined**

**Authority:** IC 12-10-16-5

**Affected:** IC 12-10-16

Sec. 18. "Prescription printout" means an itemized report prepared by a **pharmacy provider** for an enrollee showing prescription data for the enrollee for a stated benefit period. Such prescription data must include, but is not limited to, **the following:**

- (1) Enrollee name and address.
- (2) Prescription number.
- (3) NDC code.
- (4) Drug name.
- (5) Drug strength.
- (6) Dosage form.
- (7) Quantity dispensed.
- (8) Date of dispense. ~~and~~
- (9) The amount of any discount provided.**

~~(9)~~ **(10)** The amount paid by the enrollee or any insurance plan.  
(Office of the Secretary of Family and Social Services; 405 IAC 6-2-18; filed Mar 8, 2001, 11:19 a.m.: 24 IR 2458)

SECTION 11. 405 IAC 6-2-20 IS AMENDED TO READ AS FOLLOWS:

**405 IAC 6-2-20 “Proof of income” defined**

Authority: IC 12-10-16-5

Affected: IC 12-10-16

Sec. 20. “Proof of income” means documentation of the ~~earned and unearned~~ income of an applicant and an applicant’s family. (Office of the Secretary of Family and Social Services; 405 IAC 6-2-20; filed Mar 8, 2001, 11:19 a.m.: 24 IR 2458)

SECTION 12. 405 IAC 6-2-20.5 IS ADDED TO READ AS FOLLOWS:

**405 IAC 6-2-20.5 “Provider” defined**

Authority: IC 12-10-16-5

Affected: IC 12-10-16; IC 25-26-13-17

Sec. 20.5. (a) “Provider” means an entity who:

- (1) participates in the program;
- (2) is licensed under IC 25-26-13;
- (3) holds a proper permit under IC 25-26-13-17; and
- (4) complies with the same state enrollment requirements established for the Medicaid program at 405 IAC 5-4.

(b) Nothing in this rule prevents an enrolled provider from dispensing a prescription from an out-of-state branch location as long as the:

- (1) provider has an Indiana presence and is enrolled under the provisions of this article; and
- (2) branch location where the prescription is dispensed is located within the United States of America.

(Office of the Secretary of Family and Social Services; 405 IAC 6-2-20.5)

SECTION 13. 405 IAC 6-2-21 IS AMENDED TO READ AS FOLLOWS:

**405 IAC 6-2-21 “Refund certificate” defined**

Authority: IC 12-10-16-5

Affected: IC 12-10-16

Sec. 21. “Refund certificate” means the **claim** document issued to an enrollee by the office ~~which that~~ authorizes the enrollee, **who has not received a benefit at point of service**, to request a refund for prescription drugs purchased during a benefit period. (Office of the Secretary of Family and Social Services; 405 IAC 6-2-21; filed Mar 8, 2001, 11:19 a.m.: 24 IR 2458; errata filed May 30, 2001, 10:00 a.m.: 24 IR 3070)

SECTION 14. 405 IAC 6-2-22.5 IS ADDED TO READ AS FOLLOWS:

**405 IAC 6-2-22.5 “Reside” defined**

Authority: IC 12-10-16-5

Affected: IC 12-10-16

Sec. 22.5. “Reside” means the place where an applicant actually lives as distinguished from a domicile. (Office of the Secretary of Family and Social Services; 405 IAC 6-2-22.5)

SECTION 15. 405 IAC 6-3-2 IS AMENDED TO READ AS FOLLOWS:

**405 IAC 6-3-2 Date of application**

Authority: IC 12-10-16-5

Affected: IC 12-10-16

Sec. 2. For purposes of determining the effective date of availability of the program to an applicant, the date of application is the date the **complete** application is received by the office. (*Office of the Secretary of Family and Social Services; 405 IAC 6-3-2; filed Mar 8, 2001, 11:19 a.m.: 24 IR 2459*)

SECTION 16. 405 IAC 6-3-3 IS AMENDED TO READ AS FOLLOWS:

**405 IAC 6-3-3 Date of availability**

Authority: IC 12-10-16-5

Affected: IC 12-10-16

Sec. 3. (a) The program is available to an ~~applicant~~ **enrollee** beginning with the benefit period prior to the one in which the ~~applicant applies~~ **enrollee applied** for enrollment in the program.

(b) **After July 1, 2002, program availability will be no sooner than the date complete application is received and approved.**

(c) **Those enrollees applying on or before the tenth of a month will have point of service benefits available on the first day of the following month. Those enrollees applying after the tenth of a month will have point of service benefits available no later than the first day of the second following month.**

(d) The program is not available for prescription drugs purchased prior to the month in which the ~~applicant~~ **enrollee** turned sixty-five (65) years of age. (*Office of the Secretary of Family and Social Services; 405 IAC 6-3-3; filed Mar 8, 2001, 11:19 a.m.: 24 IR 2459*)

SECTION 17. 405 IAC 6-4-2 IS AMENDED TO READ AS FOLLOWS:

**405 IAC 6-4-2 Income**

Authority: IC 12-10-16-5

Affected: IC 12-10-16

Sec. 2. (a) To be eligible for the program, an applicant's monthly family net income must not exceed the income limit listed below for the applicant's family size:

Family Size	Net Monthly Income Limit
1	<del>\$940</del> <b>\$997</b>
2	<del>\$1,266</del> <b>\$1,344</b>
3	<del>\$1,592</del> <b>\$1,690</b>

(b) For each additional family member over three (3), the family member standard shall be added to the net monthly income limit for a family of three in order to calculate the net monthly income limit. A child who earns more than the family member standard per month is not included in the calculation of monthly net income or in family size.

(c) The monthly net income limits are determined by multiplying the **annual** federal poverty guideline **amounts** for each family size by one hundred thirty-five percent (135%), dividing by twelve (12), and then rounding up to the next whole dollar.

(d) The income standards in subsection (a) shall increase annually in the same percentage (%) amount that is applied to the federal poverty guideline. The increase shall be effective on the first day of the second month following the month of publication of the federal poverty guideline in the Federal Register. (*Office of the Secretary of Family and Social Services; 405 IAC 6-4-2; filed Mar 8, 2001, 11:19 a.m.: 24 IR 2459*)

SECTION 18. 405 IAC 6-5-1 IS AMENDED TO READ AS FOLLOWS:

#### 405 IAC 6-5-1 Prescription drug coverage

Authority: IC 12-10-16-5

Affected: IC 12-10-16

Sec. 1. (a) The program shall issue a partial refund to an enrollee for the purchase of prescription drugs, as defined under this article, based upon the limitations set forth in this rule **if an enrollee submits a refund certificate.**

(b) **Rather than submit a refund certificate, an eligible enrollee may go to any participating provider to purchase prescription drugs and present his or her prescription and program identification card at the point of service to receive immediate program benefits. At the point of service, the provider shall determine the following:**

(1) **Whether the enrollee is eligible.**

(2) **Whether the individual whose name appears on the identification card is the same as the individual for whom the prescription is written.**

(3) **Whether the enrollee has benefits available.**

(4) **The price of a prescription drug in accordance with 405 IAC 6-8-3.**

(5) **That all prescription discounts, if applicable, are taken after the appropriate drug price has been determined.**

(6) **The amount of the enrollee's copayment.**

*(Office of the Secretary of Family and Social Services; 405 IAC 6-5-1; filed Mar 8, 2001, 11:19 a.m.: 24 IR 2460)*

SECTION 19. 405 IAC 6-5-2 IS AMENDED TO READ AS FOLLOWS:

#### 405 IAC 6-5-2 Benefit defined by family income level

Authority: IC 12-10-16-5

Affected: IC 12-10-16

Sec. 2. (a) The refund **or benefit at the time of purchase, which is** issued to an enrollee per benefit period, is limited by family **monthly net** income as follows:

Income Guideline	Individual's Monthly Net Income	Couple's Monthly Net Income	Annual Benefit
Up to 135% of federal poverty guideline	Up to <del>\$940</del> <b>\$997</b> per month	Up to <del>\$1,266</del> <b>\$1,344</b> per month	50% <del>refund</del> ; <b>benefit</b> , up to \$500 benefit/year
Up to 120% of federal poverty guideline	Up to <del>\$835</del> <b>\$886</b> per month	Up to <del>\$1,125</del> <b>\$1,194</b> per month	50% <del>refund</del> ; <b>benefit</b> , up to \$750 benefit/year
Under 100% of federal poverty guideline	Up to <del>\$696</del> <b>\$739</b> per month	Up to <del>\$938</del> <b>\$995</b> per month	50% <del>refund</del> ; <b>benefit</b> , up to \$1,000 benefit/year

(b) An enrollee and spouse who are enrolled in the program will each receive the maximum refund, **or of benefit at the time of purchase, for** prescription drug expenses up to the annual benefit in subsection (a) for which they qualify by family income level.

(c) ~~The benefit income guidelines are determined by multiplying the federal poverty guideline for each family size by each income guideline percentage (%), dividing by twelve (12), and then rounding up to the next whole dollar. Upon such time as the enrollee exceeds the annual benefit, the enrollee may use the program identification card to access program benefit prescription drug rates as defined by 405 IAC 6-8-3 and 405 IAC 6-8-4 until the enrollee benefit period expires.~~

(d) ~~The benefit income guidelines in subsection (a) shall increase annually in the same percentage (%) amount that is applied to the federal poverty guideline. The increase shall be effective on the first day of the second month following the month of publication of the federal poverty guideline in the Federal Register. (Office of the Secretary of Family and Social Services; 405 IAC 6-5-2; filed Mar 8, 2001, 11:19 a.m.: 24 IR 2460)~~

SECTION 20. 405 IAC 6-5-3 IS AMENDED TO READ AS FOLLOWS:

#### **405 IAC 6-5-3 Benefit period**

Authority: IC 12-10-16-5

Affected: IC 12-10-16

Sec. 3. **(a)** The **refund certificate** program shall consist of four **(4)** benefit periods per year, defined as follows:

- (1) Benefit period one: October 1 through December 31.
- (2) Benefit period two: January 1 through March 31.
- (3) Benefit period three: April 1 through June 30.
- (4) Benefit period four: July 1 through September 30.

**(b) The point of service benefit shall be one (1) year of continuous eligibility up to the benefit limit in accordance with section 2 of this rule.** *(Office of the Secretary of Family and Social Services; 405 IAC 6-5-3; filed Mar 8, 2001, 11:19 a.m.: 24 IR 2460)*

SECTION 21. 405 IAC 6-5-4 IS AMENDED TO READ AS FOLLOWS:

#### **405 IAC 6-5-4 Benefit duration**

Authority: IC 12-10-16-5

Affected: IC 12-10-16

Sec. 4. **(a)** The **refund certificate** program is available to an enrollee for a maximum of four (4) consecutive benefit periods.

**(b) The point of service benefit is available to an enrollee for one (1) year.**

**(c) If an enrollee is utilizing both the refund certificate program and the point of service program, the maximum benefit duration to an enrollee is one (1) year of continuous benefits.**

**(d) To reenroll in the refund certificate program following the expiration of the enrollee's last benefit period, or for point of service benefits a new application must be submitted to the office in accordance with this article.** *(Office of the Secretary of Family and Social Services; 405 IAC 6-5-4; filed Mar 8, 2001, 11:19 a.m.: 24 IR 2460)*

SECTION 22. 405 IAC 6-5-5 IS AMENDED TO READ AS FOLLOWS:

#### **405 IAC 6-5-5 Benefit period ineligibility**

Authority: IC 12-10-16-5

Affected: IC 12-10-16

Sec. 5. ~~(a)~~ An enrollee is ineligible for a **refund program benefit** for prescription drugs purchased during any benefit period in which the enrollee has health insurance **or Medicaid** with a prescription drug benefit.

~~(b) Ineligibility for a refund under (a) does not terminate enrollment in the program. An enrollee may request a refund during any later benefit period during which the enrollee does not have health insurance with a prescription drug benefit.~~ *(Office of the Secretary of Family and Social Services; 405 IAC 6-5-5; filed Mar 8, 2001, 11:19 a.m.: 24 IR 2460)*

SECTION 23. 405 IAC 6-5-6 IS AMENDED TO READ AS FOLLOWS:

#### **405 IAC 6-5-6 Benefits; program appropriations**

Authority: IC 12-10-16-5

Affected: IC 12-10-16

Sec. 6. (a) Upon submission of a completed refund certificate, **or at the point of service**, benefits are available under this program on a first come, first ~~serve~~ **served** basis.

(b) Benefits will exist under this program to the extent that appropriations are available for the program.

(c) The state budget director shall determine if appropriations are available to continue **offering and** paying benefits to enrollees. *(Office of the Secretary of Family and Social Services; 405 IAC 6-5-6; filed Mar 8, 2001, 11:19 a.m.: 24 IR 2460)*

SECTION 24. 405 IAC 6-6-2 IS AMENDED TO READ AS FOLLOWS:

**405 IAC 6-6-2 Letter of eligibility**

**Authority:** IC 12-10-16-5

**Affected:** IC 12-10-16

Sec. 2. Once the office has ~~processed a complete application,~~ **determined eligibility**, the applicant will receive a letter of eligibility ~~by mail~~ notifying the applicant of his or her status in the program. An applicant will either be eligible and enrolled in the program, or ineligible and not enrolled in the program. **New applicants determined to be eligible after July 1, 2002, will receive an approved letter of eligibility and a program benefit card.** *(Office of the Secretary of Family and Social Services; 405 IAC 6-6-2; filed Mar 8, 2001, 11:19 a.m.: 24 IR 2461)*

SECTION 25. 405 IAC 6-6-3 IS AMENDED TO READ AS FOLLOWS:

**405 IAC 6-6-3 Refund certificates**

**Authority:** IC 12-10-16-5

**Affected:** IC 12-10-16

Sec. 3. (a) An enrollee will receive up to four (4) refund certificates with a letter of eligibility which enrolls the applicant into the program.

(b) Each refund certificate corresponds to one (1) of four (4) refund periods as defined ~~below:~~ **as follows:**

- (1) Refund period one: January 1 through March 31.
- (2) Refund period two: April 1 through June 30.
- (3) Refund period three: July 1 through September 30.
- (4) Refund period four: October 1 through December 31.

(c) Each refund period corresponds to one (1) benefit period as set forth ~~below:~~ **as follows:**

Benefit Period	Refund Period
October 1 through December 31	January 1 through March 31
January 1 through March 31	April 1 through June 30
April 1 through June 30	July 1 through September 30
July 1 through September 30	October 1 through December 31

**(d) Refund certificates will not be available on or after July 1, 2002.**

**(e) Refund certificates for July–September 2002 will be the last quarter paid by the program.** *(Office of the Secretary of Family and Social Services; 405 IAC 6-6-3; filed Mar 8, 2001, 11:19 a.m. 24 IR 2461)*

SECTION 26. 405 IAC 6-6-4 IS AMENDED TO READ AS FOLLOWS:

**405 IAC 6-6-4 Refund certificate redemption**

**Authority:** IC 12-10-16-5

**Affected:** IC 12-10-16

Sec. 4. (a) **If the enrollee is using a refund certificate**, during each refund period, the enrollee must submit the applicable refund certificate with the prescription printout for the corresponding benefit period to the office in the manner prescribed by the office.

(b) The refund period deadline is the date which corresponds to the later of thirty-five (35) days from the date on the



letter of eligibility or the last day of the applicable refund period.

(c) An enrollee will be notified by mail if the enrollee submits an incomplete request for refund. An incomplete request for refund includes:

- (1) an unsigned refund certificate;
- (2) a refund certificate with no insurance verification;
- (3) a prescription printout which fails to state all information in ~~405 IAC 6-2-17~~; **405 IAC 6-2-18**;
- (4) the absence of a refund certificate for the applicable benefit period;
- (5) the absence of a prescription printout for the applicable benefit period; or
- (6) the absence of any other information that is necessary under this article to process a refund request.

The enrollee must submit the information requested in the letter of notification by the deadline in the letter of notification.

(d) ~~A refund certificate~~ **refund certificate** received by the office after the refund deadline date will not be processed and no refund will be issued. Any refund certificate or prescription printout requested in **subsection (c)** that is received by the office after the stated deadline date will not be processed and no refund will be issued. (*Office of the Secretary of Family and Social Services; 405 IAC 6-6-4; filed Mar 8, 2001, 11:19 a.m.: 24 IR 2461*)

SECTION 27. 405 IAC 6-8 IS ADDED TO READ AS FOLLOWS:

#### **Rule 8. Provider Appeal; Records; Drug Price; Dispensing Fee**

##### **405 IAC 6-8-1 Provider appeal procedures**

Authority: IC 12-10-16-5

Affected: IC 12-10-16

**Sec. 1. All provider appeals from office action taken under this article shall be governed by the procedures and time limits for Medicaid providers set out in 405 IAC 1-1.5 and 405 IAC 6-9-1, if applicable.** (*Office of the Secretary of Family and Social Services; 405 IAC 6-8-1*)

##### **405 IAC 6-8-2 Provider records**

Authority: IC 12-10-16-5

Affected: IC 12-10-16

**Sec. 2. The provisions of 405 IAC 1-5 concerning contents, retention, and disclosure of records of Medicaid providers shall apply to providers of covered drugs under this title.** (*Office of the Secretary of Family and Social Services; 405 IAC 6-8-2*)

##### **405 IAC 6-8-3 Drug price methodology**

Authority: IC 12-10-16-5

Affected: IC 12-10-16

**Sec. 3. Drug prices for purposes of determining provider reimbursement and enrollee copayment shall be calculated using the reimbursement methodology for Medicaid prescription drugs under rules adopted by the secretary at 405 IAC 5-24.** (*Office of the Secretary of Family and Social Services; 405 IAC 6-8-3*)

##### **405 IAC 6-8-4 Dispensing fee**

Authority: IC 12-10-16-5

Affected: IC 12-10-16

**Sec. 4. The Indiana prescription drug dispensing fee maximum under this title shall be the same as that which is allowable under rules adopted by the secretary at 405 IAC 5-24-6.** (*Office of the Secretary of Family and Social Services; 405 IAC 6-8-4*)

SECTION 28. 405 IAC 6-9 IS ADDED TO READ AS FOLLOWS:

## **Rule 9. Provider Claims; Payments; Overpayments; Sanctions**

### **405 IAC 6-9-1 Filing of claims; filing date; payment liability**

Authority: IC 12-10-16-5

Affected: IC 12-10-16

**Sec. 1. (a) All provider claims for payment for point of service benefits rendered to enrollees must be originally filed with the office's contractor within twelve (12) months of the date of the provision of the service. A provider who is dissatisfied with the amount of his or her reimbursement may appeal under the provisions of 405 IAC 6-8-1. However, prior to filing such an appeal, the provider must:**

- (1) resubmit the claim if the reason for denial of payment was due to incorrect or inaccurate billing by the provider;**
- (2) submit, if appropriate, an adjustment request to the office contractor's adjustment and resolution unit;**  
**or**
- (3) submit a written request to the office's contractor, stating why the provider disagrees with the denial or amount of reimbursement.**

**(b) All requests for payment adjustments and/or reconsideration of a claim that has been denied must be submitted to the office contractor within sixty (60) days of the date of notification that the claim was paid or denied. In order to be considered for payment, each subsequent claim resubmission or adjustment request must be submitted within sixty (60) days of the most recent notification that the claim was paid or denied. The date of notification shall be considered to be three (3) days following the date of mailing from the office's contractor. All claims filed after twelve (12) months of the date of the provision of the service, as well as claims filed after sixty (60) days of the date of notification that the claim was paid or denied shall be rejected for payment unless a waiver has been granted. In extenuating circumstances a waiver of the filing limit may be authorized by the contractor or the office when justification is provided to substantiate why the claim could not be filed or refiled within the filing limit. Some examples of situations considered to be extenuating circumstances are as follows:**

- (1) Contractor or state error or action that has delayed payment.**
- (2) Reasonable and continuous attempts on the part of the provider to resolve a claim problem.**

**(c) All claims filed for reimbursement shall be reviewed prior to payment by the office or its contractor, for completeness, including required documentation, appropriateness of services and charges, application of discounts, and other areas of accuracy and appropriateness as indicated.**

**(d) The office is only liable for the payment of claims filed by providers who were certified providers at the time the service was rendered and for services provided to persons who were enrolled in the Indiana prescription drug program as eligible enrollees at the time service was provided. The claim will not be paid if the services provided are outside the service parameters as established by the office.**

**(e) A provider shall collect from an enrollee or from the authorized representative of the enrollee that portion of his or her charge for a benefit as defined by 405 IAC 6-5-2, which is not reimbursed by the Indiana prescription drug program and after all prescription discounts have been calculated in accordance with this article. (*Office of the Secretary of Family and Social Services; 405 IAC 6-9-1*)**

### **405 IAC 6-9-2 Denial of claim payment; basis**

Authority: IC 12-10-16-5

Affected: IC 4-21.5-3-7; IC 4-21.5-4; IC 12-10-16

**Sec. 2. (a) The office may deny payment, or instruct the contractor to deny payment, to any provider if, after investigation by the office, the office's designee, or other governmental authority, the office finds any of the following:**

- (1) The services claimed cannot be documented by the provider in accordance with 405 IAC 6-8-2.**
- (2) The services claimed were provided to a person other than a person in whose name the claim is made.**
- (3) The services claimed were provided to a person who was not eligible for benefits at the time of the provision of the service.**
- (4) The claim arises out of any of the following acts or practices:**

- (A) Presenting, or causing to be presented, for payment any false or fraudulent claim.
  - (B) Submitting, or causing to be submitted, information for the purpose of obtaining greater compensation than that to which the provider is legally entitled.
  - (C) Submitting, or causing to be submitted, any false information.
  - (D) Failure to disclose, or make available to the office, or its authorized agent, records of services provided to enrollees and records of payments made therefor.
  - (E) Engaging in a course of conduct or performing an act deemed by the office to be improper or abusive of the program or continuing such conduct following notification that the conduct should cease.
  - (F) Breach of the terms of the Indiana prescription drug pharmacy provider agreement and/or failure to comply with the terms of the provider certification on the claim form.
  - (G) Violating any provision of state law or any rule or regulation promulgated pursuant to this article or any provider bulletin published thereto.
  - (H) Submission of a false or fraudulent application for provider status.
  - (I) Failure to meet standards required by the state for participating in the program.
  - (J) Refusal to execute a new Indiana prescription drug pharmacy provider agreement when requested by the office or its contractor to do so.
  - (K) Failure to correct deficiencies to provider operations after receiving written notice of these deficiencies from the office.
  - (L) Failure to repay within sixty (60) days or make acceptable arrangements for the repayment of identified overpayments or otherwise erroneous payments, except as provided in this rule.
  - (M) Presenting claims for which benefits are not available.
- (5) The claim arises out of any act or practice prohibited by rules and regulations of the office.

(b) The decision as to denial of payment for a particular claim or claims is at the discretion of the office. This decision shall be final and:

- (1) will be mailed to the provider by United States mail at the address contained in the office records and on the claims or transmitted electronically if the provider has elected to receive electronic remittance advices;
- (2) will be effective upon receipt; and
- (3) may be administratively appealed in accordance with this article.

(c) The decision as to claim payment suspension is at the discretion of the office, and may include either of the following:

- (1) The denial of payment for all claims that have been submitted by the provider pending further investigation by the office, the office's designee, or other governmental authority.
- (2) The suspension or withholding of payment on any or all claims of the provider pending an audit or further investigation by the office, the office's designee, or other governmental authority.

(d) The decision of the office under subsection (c) shall:

- (1) be served upon the provider by certified mail, return receipt requested;
- (2) contain a brief description of the decision;
- (3) become final fifteen (15) days after its receipt; and
- (4) contain a statement that any appeal from the decision shall be taken in accordance with IC 4-21.5-3-7 and 405 IAC 6-8-1.

(e) If an emergency exists, as determined by the office, the office may issue an emergency directive suspending or withholding payment on any or all claims of the provider pending further investigation by the office, the office's designee, or other governmental authority under IC 4-21.5-4. Any order issued under this subsection shall:

- (1) be served upon the provider by certified mail, return receipt requested;
- (2) become effective upon receipt;
- (3) include a brief statement of the facts and law that justifies the office's decision to issue an emergency directive; and
- (4) contain a statement that any appeal from the decision of the assistant secretary made under this subsection shall be taken in accordance with IC 4-21.5-3-7 and 405 IAC 6-8-1.

**405 IAC 6-9-3 Overpayments made to providers; recovery**

Authority: IC 12-10-16-5

Affected: IC 4-21.5-3; IC 6-8.1-10-1; IC 12-10-16

**Sec. 3. (a) The office may recover payment, or instruct its contractor to recover payment, from any provider for services rendered to an individual, or claimed to be rendered to an individual, if the office, after investigation or audit, finds that:**

- (1) the services paid for cannot be documented by the provider as required by 405 IAC 6-8-2;**
- (2) the services were provided to a person other than the person in whose name the claim was made and paid;**
- (3) the service reimbursed was provided to a person who was not eligible for benefits at the time of the provision of the service;**
- (4) the paid claim arises out of any act or practice prohibited by law or by rules of the office;**
- (5) overpayment resulted from an inaccurate description of prescription data;**
- (6) overpayment resulted from duplicate billing; and**
- (7) overpayment to the provider resulted from any other reason not specified in this subsection.**

**(b) The office may determine the amount of overpayments made to a provider by means of a random sample audit. The random sample audit shall be conducted in accordance with generally accepted statistical methods, and the selection criteria shall be based on a table of random numbers derived from any book of random sampling generally accepted by the statistical profession.**

**(c) The office or its designee may conduct random sample audits for the purpose of determining overcharges to the Indiana prescription drug program. The following criteria apply to random sample audits:**

- (1) In the event that the provider wishes to appeal the accuracy of the random sample methodology under IC 4-21.5-3, the provider may present evidence to show that the sample used by the office was invalid and therefore cannot be used to project the overpayments identified in the sample to total billings for the audit period.**
- (2) The provider may also conduct an audit, at the provider's expense, of either a valid random sample audit, using the same random sampling methodology as used by the office, or an audit of one hundred percent (100%) of medical records of payments received during the audit period. Any such audit must be completed within one hundred eighty (180) days of the date of appeal and must demonstrate that the provider's records for the unaudited services provided during the audit period were in compliance with state and federal law. The provider must submit supporting documentation to demonstrate this compliance.**

**(d) If the office determines that an overcharge has occurred, the office shall notify the provider by certified mail. The notice shall include a demand that the provider reimburse the office, within sixty (60) days of the provider's receipt of the notification, for any overcharges determined by the office. Except as provided in subsection (f), a provider who receives a notice and request for repayment may elect to do one (1) of the following:**

- (1) Repay the amount of the overpayment not later than sixty (60) days after receiving notice from the office, including interest from the date of overpayment.**
- (2) Request a hearing and repay the amount of the alleged overpayment not later than sixty (60) days after receiving notice from the office.**
- (3) Request a hearing not later than sixty (60) days after receiving notice from the office and not repay the alleged overpayment, except as provided in subsection (e).**

**(e) If:**

- (1) a provider elects to proceed under subsection (d)(3); and**
- (2) the office of the secretary determines after the hearing and any subsequent appeal that the provider owes the money;**

**the provider shall pay the amount of the overpayment, including interest from the date of the overpayment.**

(f) The office may enter into an agreement with the provider regarding the repayment of any overpayment made to the provider. Such agreement shall state that the amount of overpayment shall be deducted from subsequent payments to the provider. Such subsequent payment deduction shall not exceed a period of six (6) months from the date of the agreement. The repayment agreement shall include provisions for the collection of interest on the amount of the overpayment. Such interest shall not exceed the percentage rate that is determined by the commissioner of the department of state revenue under IC 6-8.1-10-1(c).

(g) Whenever the office determines, after an investigation or audit, that an overpayment to a provider should be recovered, the office shall assess an interest charge in addition to the amount of overpayment demanded. Such interest charge shall not exceed the rate that is determined by the commissioner of the department of state revenue under IC 6-8.1-10-1(c). Such interest charge shall be applied to the total amount of the overpayment, less any subsequent repayments. The interest shall accrue from the date of the overpayment to the provider and shall apply to the net outstanding overpayment during the periods in which such overpayment exists. When an overpayment is determined pursuant to the results of a random sample audit, the date the overpayment occurred shall be considered to be the last day of the audit period, and interest will be calculated from the last day of the audit period. Recovering interest:

(1) at a rate that is the percentage rounded to the nearest whole number that equals the average investment yield on state money for the state's previous fiscal year, excluding pension fund investments, as published in the auditor of state's comprehensive annual financial report; and

(2) accruing from the date of overpayment on amounts paid to a provider that are in excess of the amount subsequently determined to be due the provider as a result of an audit, a reimbursement cost settlement or a judicial or an administrative proceeding.

(h) If the office recovers an overpayment to a provider that is subsequently found not to have been owing to the office, either in whole or in part, then the office will pay to the provider interest on the amount erroneously recovered from the provider. Such interest will accrue from the date that the overpayment was recovered by the office until the date the overpayment is restored to the provider. Such interest will accrue at the rate of interest set by the commissioner for interest payments from the department of state revenue to a taxpayer. The office will not pay interest to a provider under any other circumstances.

(i) If, after receiving a notice and request for repayment, the provider fails to elect one (1) of the options listed in subsection (d) within sixty (60) days and the administrator determines that reasonable grounds exist to suspect that the provider has acted in a fraudulent manner, then the office shall immediately certify the facts of the case to the appropriate county prosecutor. (*Office of the Secretary of Family and Social Services; 405 IAC 6-9-3*)

#### **405 IAC 6-9-4 Repayment of overpayment to office**

Authority: IC 12-10-16-5

Affected: IC 12-10-16

Sec. 4. (a) The office may require the repayment of any amount determined by the office to have been paid to the provider in error, prior to an evidentiary hearing or summary review, unless an appeal is pending and the provider has elected not to repay an alleged overpayment pursuant to section 3(d)(3) of this rule. The office may, in its discretion, recoup any overpayment to the provider by the following means:

(1) Offset the amount of the overpayment against current payments to a provider.

(2) Require that the provider satisfy the overpayment by refunding the entire amount of the overpayment to the office directly.

(3) Enter into an agreement with the provider in accordance with section 3 of this rule.

(b) Interest from the date of the overpayment will be assessed even if the provider repays the overpayment to the office within thirty (30) days after receipt of the notice of the overpayment. This subsection applies to any of the methods of recoupment set out in this section. (*Office of Family and Social Services; 405 IAC 6-9-4*)

#### **405 IAC 6-9-5 Sanctions against providers; determination after investigation**

Authority: IC 12-10-16-5

Affected: IC 4-21.5-3-6; IC 4-21.5-3-7; IC 4-21.5-4; IC 12-10-16

Sec. 5. (a) If, after investigation by the office, the office's designee, or other governmental authority, the office determines that a provider has violated any provision of IC 12-10-16, or has violated any rule established under one (1) of those sections, the office may impose one (1) or more of the following sanctions:

- (1) Deny payment to the provider for services rendered during a specified period of time.
- (2) Reject a prospective provider's application for participation in the program.
- (3) Remove a provider's certification for participation in the program (decertify the provider).
- (4) Assess a fine against the provider in an amount not to exceed three (3) times the amounts paid to the provider in excess of the amounts that were legally due.
- (5) Assess an interest charge, at a rate not to exceed the rate established within this article on the amounts paid to the provider in excess of the amounts that were legally due. The interest charge shall accrue from the date of the overpayment to the provider.

(b) Specifically, the office may impose the sanctions in subsection (a) if, after investigation by the office, the office's designee, or other governmental authority, the office determines that the provider did any of the following:

- (1) Submitted, or caused to be submitted, claims for services which cannot be documented by the provider.
- (2) Submitted, or caused to be submitted, claims for services provided to a person other than a person in whose name the claim is made.
- (3) Submitted, or caused to be submitted, any false or fraudulent claims for services.
- (4) Submitted, or caused to be submitted, information with the intent of obtaining greater compensation than that which the provider is legally entitled.
- (5) Engaged in a course of conduct or performed an act deemed by the office to be abusive of the program or continuing such conduct following notification that the conduct should cease.
- (6) Breached, or caused to be breached, the terms of the provider certification agreement.
- (7) Failed to comply with the terms of the provider certification on the claim form.
- (8) Overutilized, or caused to be overutilized, the program.
- (9) Submitted, or caused to be submitted, a false or fraudulent provider certification agreement.
- (10) Submitted, or caused to be submitted, any claims for services arising out of any act or practice prohibited by the criminal provisions of the Indiana Code or by the rules of the office.
- (11) Failed to disclose or make available to the office, the office's designee, or other governmental authority, after reasonable request and notice to do so, documentation of services provided to enrollees and office records of payments made therefor.
- (12) Failed to meet standards required by state law for participation.
- (13) Charged an enrollee copayment for covered services over and above that allowable under this article.
- (14) Refused to execute a new provider certification agreement when requested to do so.
- (15) Failed to correct deficiencies to provider operations after receiving written notice of these deficiencies from the office.
- (16) Failed to repay or make arrangements for the repayment of identified overpayments or otherwise erroneous payments, unless an appeal is pending and the provider has elected not to repay an alleged overpayment.

(c) The office may enter a directive imposing a sanction under IC 4-21.5-3-6. Any directive issued under this subsection shall:

- (1) be served upon the provider by certified mail, return receipt requested;
- (2) contain a brief description of the order;
- (3) become final fifteen (15) days after its receipt; and
- (4) contain a statement that any appeal from the decision of the office made under this section shall be taken in accordance with IC 4-21.5-3-7 and 405 IAC 6-8-1.

(d) If an emergency exists, as determined by the office, the office may issue an emergency directive imposing a sanction under IC 4-21.5-4. Any order issued under this subsection shall:

- (1) be served upon the provider by certified mail, return receipt requested;
- (2) become effective upon receipt;
- (3) include a brief statement of the facts and law that justifies the office's decision to issue an emergency

**directive; and**

**(4) contain a statement that any appeal from the decision made under this section shall be taken in accordance with IC 4-21.5-3-7 and 405 IAC 6-8-1.**

**(e) The decision to impose a sanction shall be made at the discretion of the office.** *(Office of the Secretary of Family and Social Services; 405 IAC 6-9-5)*

***Notice of Public Hearing***

*Under IC 4-22-2-24, notice is hereby given that on August 28, 2002 at 9:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the Office of the Secretary of Family and Social Services will hold a public hearing on proposed amendments to provide for point of sale benefits to Hoosier Rx (Indiana prescription drug program) enrollees. Written comments may be directed to the Indiana Government Center-South, 402 West Washington Street, Room W451, MS-27, Office of General Counsel, Attention: Maureen Bartolo, Indianapolis, Indiana 46204. Correspondence should be identified in the following manner: "COMMENTS RE: PROPOSED RULE LSA Document #01-373: Hoosier Rx POS". Written comments received will be made available for public display at the above listed address of the Office of General Counsel.*

*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