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

Proposed Rule
LSA Document #05-76

DIGEST

Amends 405 IAC 5-24-4 to revise the Medicaid reimbursement methodology for payment of legend drugs. Amends 405 IAC 5-24-5 to amend the Medicaid reimbursement methodology for insulin. Makes other nonsubstantive changes. Effective 30 days after filing with the Secretary of State.

405 IAC 5-24-4
405 IAC 5-24-5

SECTION 1. 405 IAC 5-24-4 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.
- (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 **and section 5(c) of this rule**, the Indiana Medicaid EAC is:

- (1) for brand name drugs, ~~eighty-six and one-half~~ **eighty-one percent (81%)**; or
- (2) for generic drugs, eighty percent (80%);

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 (HICP)~~ **Medicaid** are required, as a condition of participation, to make available and submit to the **OMPP office** or its designee acquisition cost information, product availability information, or other information deemed necessary by the **OMPP office** for the efficient operation of the pharmacy benefit ~~within the HICP~~ in the format requested by the **OMPP office** or its designee. Providers will not be reimbursed for this information and will submit information to the **OMPP office** or its designee within thirty (30) days following a request for such information unless the **OMPP office** 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.]; filed Apr 30, 2002, 10:59 a.m.: 25 IR 2727; errata filed Aug 22, 2002, 3:11 p.m.: 26 IR 35)

SECTION 2. 405 IAC 5-24-5 IS AMENDED TO READ AS FOLLOWS:

405 IAC 5-24-5 Reimbursement for nonlegend drugs

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

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

Sec. 5. (a) The office shall reimburse pharmacy providers for the cost and dispensation of nonlegend (over-the-counter) drugs included on the Medicaid nonlegend drug formulary as provided for in this section.

(b) The office shall reimburse for nonlegend drugs, **except insulin**, at the lowest of the following rates:

(1) One hundred fifty percent (150%) of the state maximum allowable cost, as set out in the Medicaid Pharmacy Provider Manual and amendments thereto, for the drug in the quantity dispensed, as of the date dispensed.

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

(c) The office shall reimburse for insulin at the estimated acquisition cost (EAC) of the drug, plus any applicable Medicaid dispensing fee. For purposes of this subsection, EAC is defined in section 4(b) of this rule. (*Office of the Secretary of Family and Social Services; 405 IAC 5-24-5; filed Jul 25, 1997, 4:00 p.m.: 20 IR 3345; filed Sep 27, 1999, 8:55 a.m.: 23 IR 319; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822*)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on September 22, 2005 at 9:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room B, Indianapolis, Indiana the Office of the Secretary of Family and Social Services will hold a public hearing on proposed rule amendments concerning Medicaid reimbursement for pharmacy services.

In accordance with public notice requirements established at 42 CFR 447.205 and Ind. Code 4-22-2-24(d), the Indiana Family and Social Services Administration, Office of Medicaid Policy and Planning (OMPP) gives notice of proposed changes to methods and standards governing reimbursement policy for pharmacy services rendered in the Indiana Medicaid program.

In response to rapidly escalating expenditures for Medicaid-covered drugs, and in order to stay within available appropriations while maintaining beneficiary access to services, the OMPP proposes changes to the following reimbursement elements:

- *For brand name legend drugs, increase from 13½% to 19%, the percentage subtracted from published average wholesale price (AWP).*

- *For over-the-counter (OTC) insulin products AWP minus 19% for brand name insulin and AWP minus 20% for generic insulin.*

OMPP considered information from the federal government, other state Medicaid agencies, and other payors in general in arriving at a determination to proceed with the higher percentage off of AWP. It should be noted that Indiana's Medicaid dispensing fee is high compared with those of surrounding states, but is not being changed by this rule.

Regarding the change to insulin pricing methodology, since both legend and OTC insulin products require the same dispensing function, it makes sense to bring consistency to reimbursement of the products by treating the OTC products in the same manner as the legend products. Information that was considered by OMPP is available for review at the Office of Medicaid Policy and Planning at the address set forth below.

The policies implemented by these proposals are expected to result in Medicaid program savings (both state and federal dollars) of approximately \$15.1 million in SFY 2006 and approximately \$20.2 million in SFY 2007. OMPP anticipates that these changes will be implemented on October 1, 2005, through adoption of an emergency rule.

All parties interested in the rule are invited to attend the hearing and offer public comments. In lieu of attendance at the hearing, written comments may be sent to: Marc Shirley, 405 W. Washington Street, Room W382, P.O. Box 7083, Indianapolis, IN 46207-7083. Correspondence should be identified by reference to LSA Document #05-76. All written comments concerning the rule received by OMPP will be available for public inspection by contacting: Office of Medicaid Policy and Planning, 402 W. Washington Street Room W382, Indianapolis, IN 46204

Copies of the proposed rule and this notice are now available and may be inspected by contacting the Director of the local county Division of Family Resources office, except in Marion County, where public inspection may be made at 402 West Washington Street,

Room W382, Indianapolis, Indiana. 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.

E. Mitchell Roob Jr.
Secretary
Office of the Secretary of Family and Social Services