LARRY HOGAN
Governor

BOYD K. RUTHERFORD
Lt. Governor

KATHLEEN A. BIRRANE
Commissioner

TAMMY LONGAN
Acting Deputy Commissioner

MARY KWEI
Associate Commissioner
Market Regulation & Professional Licensing

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December 19, 2022

The Honorable Bill Ferguson
President of the Senate
State House, Room H-107
100 State Circle
Annapolis, Maryland 21401

The Honorable Adrienne A. Jones
Speaker of the House of Delegates
State House, H-101
100 State Circle
Annapolis, Maryland 21401

The Honorable Delores G. Kelley
Chair, Senate Finance Committee
Miller Senate Office Building, 3 East Wing
11 Bladen Street
Annapolis, Maryland 21401

The Honorable Joseline A. Pena-Melnyk
Chair, House Health and Government Operations Committee
241 Taylor House Office Building
6 Bladen Street
Annapolis, Maryland 21401

Re: MSAR # 14263 – Report of the Pharmacist Reimbursement Workgroup

Dear President Ferguson, Speaker Jones, Chair Kelley and Chair Pena-Melnyk:

Senate Bill 661, Chapter 363(2)/House Bill 1219, Chapter 371(2) of the Acts of 2022 required the Maryland Insurance Commissioner to (i) establish a workgroup with representatives of pharmacists, carriers, managed care organizations, and other stakeholders, as appropriate, to identify options and requirements necessary for the reimbursement of pharmacists for certain services and (ii) on or before December 31, 2022, report to the Senate Finance Committee and the House Health and Government Operations Committee, in accordance with § 2–1257 of the State Government Article, on the Commissioner's findings and recommendations.

The Report of the Pharmacist Reimbursement Workgroup convened by the Maryland Insurance Administration is attached for your consideration.

Five printed copies of this report have been mailed to the DLS library for its records.

Should you have any questions regarding this report, please do not hesitate to contact me or my Director of Government Relations, Andrew Tress, at Andrew.tress1@maryland.gov.

Sincerely,

Kathleen A. Birrane
Insurance Commissioner

cc: Sarah T. Albert, Department of Legislative Services (5 copies)

Maryland
INSURANCE ADMINISTRATION

MIA Pharmacist Reimbursement Workgroup Report

(MSAR #: 14263)

December 19, 2022

Kathleen A. Birrane

Commissioner

MARYLAND INSURANCE ADMINSITRATION

PHARMACIST REIMBURSEMENT WORKGROUP REPORT

Legislative History

Senate Bill 661, Chapter 363(2)/House Bill 1219, Chapter 371 of the Acts of 2022 changed the definition of "health care provider" in § 4-403 of the Health-General Article, and included uncodified text that stated:

> AND BE IT FURTHER ENACTED, That the Maryland Insurance Commissioner shall:
>
> (1) establish a workgroup with representatives of pharmacists, carriers, managed care organizations, and other stakeholders, as appropriate, to identify options and requirements necessary for the reimbursement of pharmacists who provide medical services within their:
>
> (i) scope of practice as provided for in Title 12 of the Health Occupations Article; and
>
> (ii) work setting; and
>
> (2) on or before December 31, 2022, report to the Senate Finance Committee and the House Health and Government Operations Committee, in accordance with § 2–1257 of the State Government Article, on the Commissioner's findings and recommendations.

Maryland Insurance Administration Workgroup

Following the 2022 Legislative Session, the Maryland Insurance Administration (MIA) established a workgroup (Workgroup) in accordance with the uncodified text. The members of the Workgroup are:

- Sen. Pamela Beidle
- Deena Speights-Napata, Maryland Board of Pharmacy
- Christine Lee-Wilson, PharmD
- Aliyah Horton, Maryland Pharmacists Association
- Magaly Rodriguez, Center for Innovative Pharmacy Solutions, University of Maryland
- Mindy Smith, Tabula Rasa Healthcare
- Nicole Brandt, The Peter Lamy Center on Drug Therapy and Aging, University of Maryland School of Pharmacy
- Allison Taylor, Kaiser Foundation Health Plan
- Jennifer L. Briemann, Maryland Managed Care Organization Association
- Kathleen Loughran, Amerigroup
- Deborah Rivkin, CareFirst BlueCross BlueShield
- Matthew Celentano, League of Life and Health Insurers
- Kimberly Robinson, Cigna
- Zachary Peters, Aetna/CVS Caremark

The goal of this Workgroup is to identify options and requirements necessary for the reimbursement of pharmacists who provide medical services within their scope of practice and work setting. The Workgroup held public meetings on June 27, August 8, August 24, and September 26, 2022, to gather information and insight into the issues affecting pharmacists, carriers[1], and consumers. The public meetings provided a venue for stakeholders and other interested parties to voice concerns about the current state of pharmacist reimbursement, discuss the benefits, drawbacks, and barriers related to altering current pharmacist reimbursement frameworks, and provide any additional information related to pharmacist reimbursement. The meetings were held virtually, and notices of the meetings were posted on the MIA's website, so that members of the public could attend. The MIA also created a quick link on its website for the Pharmacist Reimbursement Workgroup and included an email address in order to solicit comments from stakeholders and the public.

The first meeting was held on June 27, 2022. The Workgroup heard comments from pharmacists, carrier representatives, and managed care organization (MCO) representatives regarding the barriers to pharmacist reimbursement for both MCOs and carriers. The representatives of the pharmacists raised issues around the definition of "health care provider" in federal law related to Medicare [2]and Medicaid [3]programs, and asserted that the definition of "health care provider" needed to be changed. Pharmacists also raised the issue that they are typically required to submit claims through the facility or supervising physician, and there are coding guidelines that create barriers to reimbursement. There was a discussion of whether these barriers to reimbursement create obstacles in access to care for patients who would benefit from receiving health care services from pharmacists.

[1] A "carrier" is an insurer, a nonprofit health service plan, or a health maintenance organization that offers health benefit plans in the State.
[2] Medicare is a federal program. Medicare benefits and claims payment practices are not subject to regulation by states.
[3] Medicaid, or Medical Assistance, is a program created by federal law, and subject to both state and federal regulation. MCOs contract with the Maryland Department of Health (MDH) to provide services to Medicaid enrollees. MCOs are primarily regulated by MDH, although the MIA licenses MCOs and enforces specific provisions of the Insurance Article with regard to MCOs.

The second meeting was held on August 8, 2022. The topics for discussion were the definition of "health care provider" and its effect on reimbursement policies, and practice settings in which pharmacists provide medical services, and billing challenges for specific practice settings. Pharmacists presented several examples of practice settings and specific issues with the practice settings, and challenges with billing, particularly for Medicare and Medicaid. A representative of the Maryland Department of Health (MDH) spoke about some of the issues involving Medicaid, including concerns about obtaining a federal match of funds to cover additional services, and the role of MCOs in providing services and arranging networks. The need for MDH to conduct a review of fiscal cost was discussed.

The third meeting was held on August 24, 2022. The topics for discussion were credentialing of pharmacists as health care practitioners, and coding and claims filing by pharmacists providing medical services within their scope of practice. Although carriers may each set their own credentialing guidelines, representatives of carriers indicated that they generally credential pharmacies rather than individual pharmacists, and they generally use a pharmacy benefits manager to handle the credentialing and contracting of pharmacies. The pharmacy submits claims for services provided by pharmacists, and the pharmacy is paid for the claims. Pharmacists who practice outside of a pharmacy are usually part of a care team, and the credentialed provider, e.g. a physician or facility, bills for the pharmacist's services. Credentialing pharmacists directly would require a change to carriers' policies related to credentialing, benefits, and criteria for utilization review. Pharmacists stated that they should be able to contract directly to provide care within their scope of practice, and be reimbursed directly at a fee schedule comparable to health care providers such as nurse practitioners.

The fourth and final meeting was held on September 26, 2022. The agenda for the meeting listed issues that had been identified in the earlier meetings, and asked for discussion to identify any other barrier to reimbursement and proposed solutions. The issues listed in the agenda were:

- A service that is within the scope of practice of a pharmacist may not be covered by a health plan, whether a commercial carrier or Medicaid managed care organization (MCO).
- A service may be covered by an MCO, but the network may not include pharmacists, and there is no requirement for the network to include pharmacists.

- Commercial carriers may cover the services when provided by pharmacists, but not contract directly with pharmacists. Instead, carriers contract with facilities or physicians who employ the pharmacists. Coding guidelines may create problems with billing for the pharmacist's services.
- Mandating coverage of services in the commercial market requires consideration of the Affordable Care Act provisions on mandates. Generally, mandates would not apply to the small group and individual markets. If a mandate applies to those markets, then the State is required to defray the costs.
- Mandating coverage of services by Medicaid and MCOs requires consideration of State and federal guidelines for Medicaid and procedures for approval.

No one disagreed with this list of issues or suggested additions. A pharmacist asked carriers to give more information on barriers to contracting. Carrier representatives indicated that a process would be needed to credential individual pharmacists, new contracts would need to be designed with appropriate fee schedules, and medical policies might need to be updated. Pharmacists would be required to have malpractice insurance. Pharmacists on the call asserted that other states had passed laws that required carriers to contract directly with pharmacists. The Workgroup also heard that some pharmacists have received denials of claims that are required to be covered, such as medical claims for prescribing contraceptives, but the MIA will address this issue through its enforcement authority.

Pharmacist Reimbursement Basics

Topics addressed in the public meetings included barriers to pharmacist reimbursement, the definition of "health care provider," practice settings that have particular billing challenges, and how carriers credential and pay pharmacists for covered services. It is important to note that the Workgroup considered only services that are currently within the scope of practice of pharmacists, and did not consider any expansion or modification of the scope of practice.

The majority of pharmacists practice in pharmacies. However, the Workgroup heard from pharmacists who practice in other settings, including long term care facilities and physician offices. Pharmacists provide health care advice and services in the various settings in which they practice. No one disputed that pharmacists play an important role in the health care system, and that pharmacists practicing in health care settings other than pharmacies should receive payment for their services.

Classification as a Health Care Provider

Pharmacists asserted that the definition of "health care provider" should be changed to include pharmacists. Section 1861(s) of the Social Security Act does not include pharmacists as health care providers who are authorized to bill and receive payment for their services from Medicare. Pharmacists asserted that Medicaid and carriers also use this definition to determine payment. However, there are several definitions of "provider" or "health care provider" included in the Insurance Article that appear to include pharmacists.

Billing and Practice Setting Challenges

The Workgroup received written and oral comments that carriers may cover health care services when provided by pharmacists, but not contract directly with pharmacists. Instead, carriers contract with facilities or physicians who employ the pharmacists. When a pharmacist provides health care services, the facility or physician submits a claim, and reimbursement may be limited by coding guidelines, such as whether additional services may be billed on the same date as a physician visit. According to oral comments from pharmacists, this model of reimbursement, especially in instances in which direct supervision is required, creates barriers to appropriate reimbursement.

The Workgroup received oral comments from carriers that, in order to allow pharmacists to receive direct reimbursement, administrative hurdles would need to be overcome, such as: new credentialing standards and processes for pharmacists, revised benefits and fee schedules for services rendered by pharmacists, new medical malpractice requirements for pharmacists, and new policy forms and contracts to account for the amended reimbursement framework.

Services within Pharmacists' Scope of Practice and Consumer Access to Services

According to written and oral comments the Workgroup received, a pharmacist's scope of practice includes medication therapy management, medication monitoring and evaluation, vaccine

administration, and injectable medication administration. Currently, a carrier or MCO may exclude a service that is within the scope of practice of a pharmacist. Additionally, a service may be covered by an MCO, but the network may not include pharmacists, and there is no requirement for the network to include pharmacists. MCOs are required to provide appropriate access to the covered services. They may do this across multiple specialties.

The Workgroup received written and oral comments alleging that barriers to reimbursement and payment parity for services within a pharmacist's scope of practice are creating consumer access barriers. The comments from pharmacists emphasized the value to consumers and patients of having pharmacists as part of their care team. If there is uncertainty regarding reimbursement, facilities and physicians may be less likely to employ pharmacists in non-pharmacy settings. However, carrier representatives and other stakeholders disputed this claim due to a lack of evidence.

Other States

During the course of workgroup discussion, the MIA was provided a list of other states that have passed bills relating to pharmacist payment parity. Of the listed states, the MIA has identified seven states that have passed relevant legislation mandating pharmacist payment parity in the commercial market: Kentucky, New Mexico, Ohio, Oklahoma, Texas, Washington, and West Virginia.

- The Kentucky bill requires that insurers reimburse pharmacists for services at a rate not less than that provided to other non-physician practitioners if the service or procedure: (a) is within the scope of the practice of pharmacy; (b) would otherwise be covered under the policy, plan, or contract if the service or procedure were provided by a: physician, advanced practice registered nurse, or physician assistant; and; (c) is performed by the pharmacist in strict compliance with laws and administrative regulations related to the pharmacist's license.
- The New Mexico bill requires that all insurance programs reimburse certified pharmacist clinicians and pharmacists certified to prescribe medications for providing medical services within the scope

of their licenses at the same level as other covered providers, such as physicians or physician assistants.

- The Ohio bill authorizes health plan issuers to reimburse pharmacists for all health services that a pharmacist is legally authorized to provide and that are covered by the health benefit plan (specifically drug therapy management, immunizations, administering injectable drugs). The bill also authorizes pharmacists to enter into contracts with carriers.
- The Oklahoma bill requires health insurers to provide direct payment or reimbursement to a pharmacist who provides health care services to an individual if the pharmacist is licensed in this state to provide health care services to individuals and if the health benefit policy, contract or agreement of the individual provides for payment or reimbursement of such service(s).
- The Texas bill prohibits carriers from denying reimbursement to a pharmacist for the provision of a service within the scope of practice, that:

  (1) would be covered by the insurance policy if the service or procedure were provided by: (a) a physician; (b) an advanced practice nurse; or (c) a physician assistant; and

  (2) is performed by the pharmacist in strict compliance with laws and rules related to: (a) the provision of the service or procedure; and (b) the pharmacist's license.
- The Washington bill requires a health carrier to reimburse for services provided by a pharmacist acting within his or her scope of practice under certain circumstances and prohibits carriers from denying benefits for health care services provided by licensed pharmacists if: the service was within the pharmacist's lawful scope of practice; the plan would have provided benefits if the services had been provided by a physician, osteopathic physician, advanced registered nurse practitioner, physician's assistant, or osteopathic physician's assistant; and the pharmacist is included in the plan's network.
- The West Virginia bill prohibits carriers from denying reimbursement for any health care service performed by a licensed pharmacist if: (a) The service performed was within the lawful scope; (b)

The plan would have provided benefits if the service had been performed by another health care provider; and (c) The pharmacist is included in the plan's network of participating providers. This bill also mandates policies that delegate credentialing agreements to contracted health care facilities must accept credentialing for pharmacists employed or contracted by those facilities.

Of the aforementioned seven states, three states indicated that the bills passed would have no fiscal impact and two states did not indicate any fiscal impact related to the legislation. Kentucky's bill was projected to increase premiums by between $0.00 to $.20 per member per month and have no impact on administrative expenses for insurers. New Mexico's bill was projected to increase state administrative costs by $671,000 because their bill also mandated an increase in reimbursement rate and the coverage of additional services.

Findings

After consideration of the four meetings held by the Working Group, and the comments of the stakeholders, the MIA has made the following findings.

Definition of Health Care Provider

The definition of "health care provider" for the Medicare program cannot be changed by the State of Maryland. The definition for Medicare did not play a role in the carriers' development of procedures regarding credentialing and contracting with pharmacists.

Medicaid MCOs

Currently, Medicaid does not require MCOs to cover services by pharmacists beyond the services associated with dispensing prescription medications and specific services mandated by statute. MDH needs to perform an analysis of the costs involved in adding these services as specific benefits.

Carriers

Section 15-701 of the Insurance Article states, in relevant part, "if the policy, contract, or certificate provides for reimbursement for a service that is within the lawful scope of practice of a health care provider licensed under the Health Occupations Article, the insured or any other person covered by or entitled to reimbursement under the policy, contract, or certificate is entitled to reimbursement for the service." Carriers did not dispute that pharmacists are entitled to reimbursement for covered services that are within their scope of practice; however, claims are generally submitted by a supervising physician, facility, or pharmacy. In addition, § 15-716 of the Insurance Article requires coverage of patient assessment regarding and administering self-administered medications or maintenance injectable medications when the services are provided by pharmacists, to the same extent as services rendered by any other licensed health care practitioner. In contrast, §§15-708 and 15-709 of the Insurance Article specify that a policy may not require a nurse anesthetist or nurse midwife to be employed by, or under a physician's order, in order for services to be covered, while a carrier may require a pharmacist to be employed by, or under a physician's order, for the pharmacist's services to be covered.

Carriers state that when services are covered, and the provider is a pharmacist, that the claims will be paid. However, carriers do not contract directly with pharmacists to provide services. The primary dispute between carriers and pharmacists is whether pharmacists should be able to contract directly with carriers to provide health care services within the scope of their licenses.

It does not appear that an additional mandate for coverage of services is required. The issue is not whether services are covered, but whether pharmacists can file claims and receive payment directly, instead of through a supervising provider.

Recommendations

The MIA was asked to provide recommendations that the General Assembly consider if pharmacist reimbursement legislation is introduced in 2023.

The MIA recommends that MDH analyze the fiscal costs related to extending coverage of health care services within the scope of practice of pharmacists.

The MIA recommends that a section be added to Title 15, Subtitle 7 of the Insurance Article that, if a policy provides for reimbursement of a service within the lawful scope of practice of a pharmacist, that the insured or any other person covered by the policy is entitled to reimbursement, and that it may not be a condition for payment that the pharmacist be employed by a physician, pharmacy, or facility, or under a physician's orders.

The MIA does not recommend an additional mandate to cover specific pharmacist services.