IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.09 - MEDICAID BASIC PLAN BENEFITS

DOCKET NO. 16-0309-1303

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-202, 56-203, 56-250 through 56-257, and 56-260 through 56-266, Idaho Code; also the Patient Protection and Affordable Care Act (Affordable Care Act - P.L. 111-148), Section 2502(a)(2).

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

Tuesday, October 15, 2013 at 11:00 a.m. MDT
Medicaid Central Office **Conference Room D-East** **3232 Elder St, Boise, ID**

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Changes to federal laws governing Medicaid programs require all states to cover tobacco cessation drug benefits for all Medicaid eligible participants effective January 1, 2014.

This rule change will add the federally required tobacco cessation counseling for all non-pregnant Medicaid eligible adults over the age of 21. These products are already covered for pregnant women and children under age 21.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: NA

FISCAL IMPACT: The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year:

These benefits are already available to Medicaid participants through the Preventive Health Assistance (PHA) program. These rules shift coverage from that program to pharmacy coverage and the net impact is expected to be cost neutral.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because it was not feasible due to the fact that these rule changes will be publishing as Temporary. Note that the Temporary rule will publish with the pending rule in the January 2014, Idaho Administrative Bulletin. The temporary rule is being done to comply with the requirements in the Affordable Care Act that add mandatory coverage for tobacco cessation drug benefits under Medicaid programs, effective January 1, 2014.

INCORPORATION BY REFERENCE: No materials are being incorporated by reference into these rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Arla Farmer (208) 364-1958.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this 30th day of August, 2013.

Tamara Prisock
DHW - Administrative Rules Unit
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
phone: (208) 334-5500; fax: (208) 334-6558
email: **dhwrules@dhw.idaho.gov**

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0309-1303

620. PREVENTIVE HEALTH ASSISTANCE (PHA): DEFINITIONS.

01. Behavioral PHA. Benefits available to a participant specifically to support ~~*tobacco cessation or*~~ weight control. ~~*(3-30-07)*~~( )

02. Benefit Year. A benefit year is twelve (12) continuous months. A participant's PHA benefit year begins the date his initial points are earned. (3-30-07)

03. PHA Benefit. A mechanism to reward healthy behaviors and good health choices of a participant eligible for preventive health assistance. (3-30-07)

04. Wellness PHA. Benefits available to a participant to support wellness ~~*and safety*~~. ~~*(3-30-07)*~~( )

621. PREVENTIVE HEALTH ASSISTANCE (PHA): PARTICIPANT ELIGIBILITY.

01. Behavioral PHA. The participant must have a Health Questionnaire on file with the Department. The Health Questionnaire is used to determine eligibility for a Behavioral PHA. The participant must indicate on the Health Questionnaire that he wants to change a behavior related to weight management ~~*or tobacco cessation*~~. The participant must meet one of the following criteria: ~~*(3-30-07)*~~( )

a. For an adult, a body mass index (BMI) of thirty (30) or higher or eighteen and one-half (18 1/2) or lower. (3-30-07)

b. For a child, a body mass index (BMI) that falls in either the overweight or the underweight category as calculated using the Centers for Disease Control (CDC) Child and Teen BMI Calculator. (3-30-07)

~~***c.*** *For either an adult or a child, use of tobacco products.* *(3-30-07)*~~

02. Wellness PHA. A participant who is required to pay premiums to maintain eligibility under IDAPA 16.03.01, "Eligibility for Health Assistance for Families and Children," is eligible for Wellness PHA. (3-30-07)

622. PREVENTIVE HEALTH ASSISTANCE (PHA): COVERAGE AND LIMITATIONS.

01. Point System. The PHA benefit uses a point system to track points earned and used by a participant. Each point equals one (1) dollar. (3-29-10)

a. Maximum Benefit Points. (3-30-07)

i. The maximum number of points that can be earned for a Behavioral PHA is two hundred (200) points each benefit year. (3-30-07)

ii. The maximum number of points that can be earned for a Wellness PHA benefit is one hundred twenty (120) points each benefit year. (3-30-07)

~~*b. Each participant is limited to one (1) Behavioral PHA benefit at any point in time. (3-30-07)*~~

~~*c*~~b. Points expire and are removed from a participant's PHA benefit at the end of the participant's benefit year. (3-30-07)

~~*d*~~c. Points earned for a specific participant's PHA benefit cannot be transferred to or combined with points in another participant's PHA benefit. (3-30-07)

~~*02. Medications and Pharmaceutical Supplies. Medications and pharmaceutical supplies must be purchased from a licensed pharmacy. (3-30-07)*~~

~~*a. Each medication and pharmaceutical supply must have a primary purpose directly related to weight management or tobacco cessation. (3-30-07)*~~

~~*b. Each medication and pharmaceutical supply must be approved by the FDA, or specifically recommended by the participant's PCP, or a referred physician specialist. (3-30-07)*~~

0~~3~~2. **Weight Management Program**. Each program must provide weight management services and must include a curriculum that includes at least one (1) of the three (3) following areas: (3-30-07)

a. Physical fitness; (3-30-07)

b. Balanced diet; or (3-30-07)

c. Personal health education. (3-30-07)

0~~4~~3. **Participant Request for Coverage**. A participant can request that a previously unidentified ~~*product or*~~ service be covered. The Department will approve a request if the product or service meets the requirements described in this section of rule and the vendor meets the requirements in Section 624 of these rules. ~~*(3-30-07)*~~( )

0~~5~~4. **Premiums**. (3-30-07)

a. Wellness PHA benefit points must be used to offset a participant's premiums. (3-29-10)

b. Only premiums that must be paid to maintain eligibility under IDAPA 16.03.01, "Eligibility for Health Assistance for Families and Children" can be offset by PHA benefit points. (3-30-07)

0~~6~~5. **Hearing Rights**. A participant does not have hearing rights for issues arising between the participant and a chosen vendor. (3-30-07)

623. PREVENTIVE HEALTH ASSISTANCE (PHA): PROCEDURAL REQUIREMENTS.

01. Behavioral PHA. (3-30-07)

a. A PHA benefit will be established for each participant who meets the eligibility criteria for Behavioral PHA. A participant must complete a PHA Benefit Agreement Form prior to earning any points. (3-30-07)

~~*b. Each participant who chooses a goal of tobacco cessation must enroll in a tobacco cessation program. (3-30-07)*~~

~~e~~b. Each participant who chooses ~~a goal of~~ to enroll in weight management must participate in a physician approved or monitored weight management program. ~~(3-30-07)~~( )

~~d~~c. An initial one hundred (100) points are earned when the agreement form is received by the Department and the benefit is established. (3-30-07)

~~e~~d. An additional one hundred (100) points can be earned by a participant who completes his program or reaches a chosen, defined goal. The vendor monitoring the participant's progress must verify that the program was completed or the goal was reached. (3-30-07)

02. Wellness PHA. (3-30-07)

a. A PHA benefit will be established for each participant who meets the eligibility criteria for Wellness PHA. Each participant must demonstrate that he has received recommended wellness visits and immunizations for his age prior to earning any points. (3-30-07)

b. Ten (10) points can be earned each month by a participant who receives all recommended wellness visits and immunizations for his age during the benefit year. (3-29-10)

03. Approved Products and Services. The reimbursable products and services of each vendor must be prior approved by the Department. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

662. PRESCRIPTION DRUGS: COVERAGE AND LIMITATIONS.

01. General Drug Coverage. The Department will pay for those prescription drugs not excluded by Subsection 662.04 of these rules which are legally obtainable by the order of a licensed prescriber whose licensing allows for the prescribing of legend drugs, as defined under Section 54-1705(28), Idaho Code, and which are deemed medically necessary as defined in Section 011 of these rules. (3-30-07)

02. Dispensing Fee. Dispensing Fee is defined as the cost of filling a prescription including direct pharmacy overhead, and is for all services pertaining to the usual practice of pharmacy, including: (4-4-13)

a. Interpretation, evaluation, compounding, and dispensing of prescription drug orders; (3-30-07)

b. Participation in drug selection; (3-30-07)

c. Drug administration; (3-30-07)

d. Drug regimen and research reviews; (3-30-07)

e. Proper storage of drugs; (3-30-07)

f. Maintenance of proper records; (3-30-07)

g. Prescriber interaction; and (3-30-07)

h. Patient counseling. (3-30-07)

03. Limitations on Payment. Medicaid payment for prescription drugs will be limited as follows: (3-30-07)

a. Days' Supply. Medicaid will not cover any days' supply of prescription drugs that exceeds the

quantity or dosage allowed by these rules. (3-30-07)

b. Brand Name Drugs. Medicaid will not pay for a brand name product that is part of the federal upper limit (FUL) or state maximum allowable cost (SMAC) listing when the physician has not specified the brand name drug to be medically necessary. (3-30-07)

c. Medication for Multiple Persons. When the medication dispensed is for more than one (1) person, Medicaid will only pay for the amount prescribed for the person or persons covered by Medicaid. (3-30-07)

d. No Prior Authorization. Medicaid will not pay for a covered drug or pharmacy item that requires, but has not received, prior authorization for Medicaid payment as required in Section 663 of these rules. (3-30-07)

e. Limitations to Discourage Waste. Medicaid may conduct drug utilization reviews and impose limitations for participants whose drug utilization exceeds the standard participant profile or disease management guidelines determined by the Department. (3-30-07)

04. Excluded Drug Products. The following categories and specific products are excluded from coverage by Medicaid: (3-30-07)

a. Non-Legend Medications. Federal legend medications that change to non-legend status, as well as their therapeutic equivalents regardless of prescription, status unless: (3-30-07)

i. They are included in Subsection 662.05.b. of these rules; or (3-30-07)

ii. The Director determines that non-legend drug products are covered based upon appropriate criteria including the following: safety, effectiveness, clinical outcomes of the drug in comparison with other therapeutically interchangeable alternative drugs, cost, and the recommendation of the Pharmacy And Therapeutics Committee. Therapeutically interchangeable is defined in Subsection 663.01.e. of these rules. (3-30-07)

b. Legend Drugs. Any legend drugs for which federal financial participation is not available. (3-30-07)

c. Diet Supplements. Diet supplements and weight loss products, except lipase inhibitors when prior authorized as outlined in Section 663 of these rules. (3-30-07)

d. Amphetamines and Related Products. Amphetamines and related products for cosmetic purposes or weight loss. Amphetamines and related products which are deemed to be medically necessary may be covered if prior authorized as outlined in Section 663 of these rules. (3-30-07)

e. Ovulation/Fertility Drugs. Ovulation stimulants, fertility drugs, and similar products. (3-30-07)

f. Impotency Aids. Impotency aids, either as medication or prosthesis. (3-30-07)

~~*g. Tobacco Cessation Products. Nicotine chewing gum, sprays, inhalers, transdermal patches and related products, with the exception that both legend and non-legend tobacco cessation products will be covered for children and pregnant women when prescribed by their physician. (4-4-13)*~~

~~*h.*~~**g.** Medications Utilized for Cosmetic Purposes. Medications utilized for cosmetic purposes or hair growth. Prior authorization may be granted for these medications if the Department finds other medically necessary indications. (3-30-07)

~~*i.*~~**h.** Vitamins. Vitamins unless included in Subsection 662.05.a. of these rules. (3-30-07)

~~*j.*~~**i.** Dual Eligibles. Drug classes covered under Medicare, Part D, for Medicaid participants who are also eligible for Medicare. (3-30-07)

05. Additional Covered Drug Products. Additional drug products will be allowed as follows:

(3-30-07)

a. Therapeutic Vitamins. Therapeutic vitamins may include: (3-30-07)

i. Injectable vitamin B12 (cyanocobalamin and analogues); (3-30-07)

ii. Vitamin K and analogues; (3-30-07)

iii. Pediatric legend vitamin-fluoride preparations; (3-30-07)

iv. Legend prenatal vitamins for pregnant or lactating women; (3-30-07)

v. Legend folic acid; (3-30-07)

vi. Oral legend drugs containing folic acid in combination with Vitamin B12 and/or iron salts, without additional ingredients; (4-4-13)

vii. Legend vitamin D and analogues; and (4-4-13)

viii. Legend ~~*smoking*~~ tobacco cessation products ~~*for pregnant women and children*~~. ~~*(4-4-13)*~~( )

b. Prescriptions for Nonlegend Products. Prescriptions for nonlegend products may include: (3-30-07)

i. Insulin; (3-30-07)

ii. Disposable insulin syringes and needles; (3-30-07)

iii. Oral iron salts; (4-4-13)

iv. Permethrin; and (4-4-13)

v. ~~*Smoking*~~ Tobacco cessation products ~~*for pregnant women and children*~~. ~~*(4-4-13)*~~( )

06. Limitation of Quantities. Medication refills provided before at least seventy-five percent (75%) of the estimated days' supply has been utilized are not covered, unless an increase in dosage is ordered. Days' supply is the number of days a medication is expected to last when used at the dosage prescribed for the participant. No more than a thirty-four (34) days' supply of continuously required medication is to be purchased in a calendar month as a result of a single prescription with the following exceptions: (3-30-07)

a. Doses of Medication. Up to one hundred (100) doses of medication may be dispensed, not to exceed a one hundred (100) day supply for: (3-30-07)

i. Cardiac glycosides; (3-30-07)

ii. Thyroid replacement hormones; (3-30-07)

iii. Prenatal vitamins; (3-30-07)

iv. Nitroglycerin products - oral or sublingual; (3-30-07)

v. Fluoride and vitamin/fluoride combination products; and (3-30-07)

vi. Nonlegend oral iron salts. (3-30-07)

b. Oral Contraceptive Products. Oral contraceptive products may be dispensed in a quantity sufficient for one (1), two (2), or three (3) cycles. (3-30-07)