

**Adopt Ins 2704 to read as follows:**

## PART Ins 2704 PRESCRIPTION PRICES FOR PHARMACISTS AND PHARMACIES

Statutory Authority: RSA 400-A:15, I; RSA 415:26; RSA 420-J:7-b, X; and RSA 420-J:12

Ins 2704.01 Scope. This part shall apply to all health benefit plans providing prescription benefits through a network of participating pharmacies.

Ins 2704.02 Definitions.

- (a) "Commissioner" means the insurance commissioner.
- (b) "Covered benefits" means those health care services and other medical services to which a covered person is entitled under the terms of a health benefit plan, including pharmacy benefits.
- (c) "Covered person" means a policyholder, subscriber, enrollee or other individual participating in a health benefit plan.
- (d) "Contracted copayment" means a fixed amount an individual is responsible to pay for covered prescriptions as set forth in the health benefit plan.
- (e) "Health benefit plan" means a plan, policy or certificate of insurance that constitutes health coverage as defined in RSA 420-G:2, IX.
- (f) "Health carrier" means an entity subject to the insurance laws and rules of this state, or subject to the jurisdiction of the commissioner, that contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the covered costs of health care services, including an insurance company, a health maintenance organization, a health service corporation, or any other entity providing a plan of health insurance, health benefits or health services.
- (g) "New Hampshire pharmacy board" means the board established in RSA 318:2.
- (h) "Participating pharmacy" means a pharmacy that, under a contract with the health carrier or its contractor or subcontractor, including any pharmacy benefits manager, has agreed to provide pharmacy services to covered persons with an expectation of receiving payment, other than coinsurance, co-payments or deductibles, directly or indirectly, from the health carrier.
- (i) "Pharmacist" means a person defined in RSA 318:1, XI.
- (j) "Pharmacy benefits manager" means a ~~person~~ "*pharmacy benefits manager*" as defined in RSA 420-J:3, XXVIII-a.

Ins 2704.03 Claims Processing.

- (a) Every health carrier that provides prescription benefits as a covered benefit under a health benefit plan shall ensure that prescription benefit claims are adjusted and paid in accordance with the requirements of Ins 1001 and RSA 420-J:8-a.
- (b) Any health carrier or pharmacy benefits manager shall require all participating pharmacies to charge any covered person the lesser of:

- (1) The pharmacy’s usual and customary price for filling the prescription; or
- (2) The contracted copayment.

(c) For purposes of this section, “usual and customary price” means the lowest charge, fee, or amount collected by a participating pharmacy for a prescription at the time such product was provided to a covered person.

(d) For the purpose of determining the ~~[lowest charge, fee, or amount]~~ “*usual and customary price*”:

- (1) If the pharmacy offers discounts or rebates, then the amount after applying discounts or rebates shall be utilized;
- (2) If the pharmacy offers a sale for a limited period of time on any good or service, then the sale price shall be utilized during the sale period;
- (3) If the pharmacy accepts less than its full charge from any customer or other payer, except as provided in (~~[d]~~e) below, then the amount accepted shall be utilized;
- (4) If any prescription, good, or service is offered free of charge by the provider, then no charge shall be made to the carrier or covered person for the provision of the product or service;
- (5) If any prescription, or related good or service, is covered under any warranty or guarantee offered by the pharmacy, then the amount charged to the covered person shall not exceed the amount which would otherwise be payable solely by the customer; and
- (6) If a pharmacy structures or packages its goods or services in a manner which is exclusively or primarily used for Medicaid, Medicare, or other third-party payers, then the charge for the most similar good or service offered to any other consumer shall be utilized.

(~~[d]~~e) In determining the “usual and customary *price*” ~~[charge, fee, or amount]~~, the following shall not be considered:

- (1) Discounts offered solely to bona fide employees or family members of employees;
- (2) Discounts offered solely on the basis of age shall be utilized in determining the “usual and customary ~~[charge]~~*price*” only when the covered person satisfies the age requirement;
- (3) Free prescriptions and related goods or services, or discounts provided to a limited number of persons on the basis of financial hardship;
- (4) Charges by a pharmacy on a sliding fee scale for a prescription, or related good or service, where the pharmacy’s charge is based on ability to pay;

(5) Charges not collected as a result of bad debts incurred by the pharmacy. A bad debt exists where sound business judgment indicates that there is no reasonable likelihood of recovery of the amount owed; and

(6) Charges for educational-related services governed by 42 U.S.C. 1396b(c).

([e]f) The health carrier and any contracted pharmacy benefits manager shall pay the full amount finally agreed upon in settlement of a claim for pharmacy benefits.

([f]g) The health carrier or pharmacy benefits manager shall not be in violation of this section when the conditions set forth in RSA 420-J:8-a, IV exist, or the claim has been submitted fraudulently or with inaccurate or misrepresented information.

#### Ins 2704.04 Complaint Process.

(a) Any pharmacy that fills prescriptions as a covered benefit under a health benefit plan and is adversely affected by the failure of a health carrier or a pharmacy benefits manager to comply with RSA 420-J:7-b, X or RSA 415:26 may file a complaint with the commissioner.

(b) Complaints alleging violations of RSA 420-J:b, X or RSA 415:26 and received directly from pharmacies or referred from the New Hampshire pharmacy board to the commissioner shall be investigated by the commissioner in accordance with the provisions of RSA 400-A:16.

(c) The commissioner shall only investigate substantiated complaints that relate to a fully insured plan within the commissioner's jurisdiction.

(d) A "substantiated complaint" means a complaint that includes all the following information:

- (1) The name, address, and license number of the pharmacy filing the complaint;
- (2) The name and license number of, and the contact information for, a pharmacist who supports the allegations in the complaint filed;
- (3) Information concerning the prescription, including the name of the prescription dispensed and the quantity and dose of the prescription dispensed, with units expressed in terms of volume, number of tablets or capsules, weight, or in other measurement;
- (4) The name of the health carrier and the name of the pharmacy benefits manager, if a pharmacy benefits manager is involved in the prescription claim made by the consumer;
- (5) A legible copy of the front and back of the consumer's insurance card for prescription benefits;
- (6) The name of the subscriber to the health benefit plan, if that information is not shown on the consumer's insurance card;
- (7) The date the pharmacy dispensed the prescription to the consumer;
- (8) The name of the consumer that requested coverage for the prescription at issue in the complaint; and

(9) Written evidence that supports the allegations of violation.

(e) The commissioner shall inform the pharmacy if the filed complaint is unsubstantiated and what missing information is needed.

(f) The commissioner shall hold any [~~unsubstantiated complaint~~]**complaint that is not substantiated** in pending status for 90 days from the date of the notice described in (e) to allow the pharmacy to submit required missing information. If missing information is not provided within 90 days of the date of the notice described in (e), the [~~unsubstantiated complaint~~]**complaint that is not substantiated** shall be closed.

Ins 2704.05 Enforcement.

(a) A health carrier or pharmacy benefits manager, acting under a fully insured plan under the commissioner's jurisdiction, shall be subject to fine or penalty if, after investigation, **notice, and hearing pursuant to RSA 400-A:16-24 and Ins 200**, the commissioner determines [~~there is sufficient evidence to show~~] the health carrier or pharmacy benefits manager has engaged in acts or practices in violation of this part .

(b) Any violation of this part shall be subject to administrative fine **or penalty** in accordance with RSA 400-A:15, III.

~~[(c) The commissioner shall impose the fine or penalty provided after notice and hearing in accordance with the procedures set forth in RSA 400-A:17 through 24 and Ins 200.]~~

Ins 2704.06 Reporting to the *New Hampshire* Board of Pharmacy.

(a) The commissioner shall prepare public reports in regard to the complaints received from pharmacies or the New Hampshire [~~pharmacy board~~]**board of pharmacy** under this part.

(b) The public report shall contain the following information:

- (1) A unique numerical identifier for each complaint received;
- (2) The name, address, and license number of the pharmacy filing the complaint;
- (3) The name and license number of the pharmacist who supports the allegations in the complaint filed;
- (4) The name of the health carrier and the name of the pharmacy benefits manager, if a pharmacy benefits manager is involved in the prescription claim made by the consumer;
- (5) The date the complaint was received;
- (6) The nature of the complaint received, to include the prescription at issue, the facts concerning the complaint and the section of rule or law that is alleged to have been violated;
- (7) The status of the investigation or an indication that the complaint is in pending status, awaiting information from the pharmacy;
- (8) The date of the final resolution of the complaint, if the complaint has been resolved; and

(9) A description of the final resolution of the complaint, to include the legal and factual findings of the commissioner as to the alleged violation.

(c) The report shall be posted electronically on the department's website *at* <http://www.nh.gov/insurance/> at least quarterly and shall also be transmitted to the New Hampshire ~~[pharmacy board]~~ *board of pharmacy*.

(d) The commissioner shall provide to any complaining pharmacy, upon request, a report of the status of complaints filed by that pharmacy, which shall contain the information set forth in (b) above.

Ins 2704.07 Confidentiality. In accordance with RSA 400-A:16, *III*, and except as otherwise provided in this part, all information collected ~~[-by]~~, *obtained, or otherwise in the control or possession of the commissioner from any source relating to* ~~[in]~~ any investigation pursuant to this part ~~[regarding payment for a consumer's pharmacy benefit claim, and any documents, materials, or other information in the control or possession of the commissioner that is furnished by a health carrier, pharmacy benefits manager, producer, or an employee or agent thereof, acting on behalf of the health carrier, pharmacy benefits manager or producer, or information obtained from the National Association of Insurance Commissioners, its affiliates or subsidiaries, or from regulatory and law enforcement officials of other foreign or domestic jurisdictions, or otherwise obtained or produced by the commissioner in an investigation pursuant to this part,]~~ shall be confidential by law and privileged, shall not be subject to RSA 91-A, shall not be subject to subpoena, and shall not be subject to discovery or admissible as evidence in any private civil action.

**APPENDIX**

<b>RULE</b>	<b>STATE OR FEDERAL STATUTE IMPLEMENTED</b>
Ins 2704.01	RSA 400-A:15, I; RSA 415:26; RSA 420-J:7-b, X; RSA 420-J:12
Ins 2704.02	RSA 318:1, XI; RSA 318:2; RSA 400-A:15, I; RSA 415:26; RSA 420-G:2, IX; RSA 420-J:3, XIX; RSA 420-J:3, XXVIII-a; RSA 420-J:7-b, X; 420-J:12
Ins 2704.03	RSA 400-A:15, I; RSA 415:26; RSA 420-J:7-b, X; RSA 420-J:8-a, IV; RSA 420-J:12; 42 U.S.C. 1396b(c)
Ins 2704.04	RSA 400-A:15, I; RSA 400-A:16; RSA 415:26; RSA 420-J:7-b, X; RSA 420-J:12
Ins 2704.05	RSA 400-A:15, I; RSA 400-A:16; RSA 400-A:17-24; RSA 415:26; RSA 420-J:7-b, X; RSA 420-J:12; RSA 420-J:14
Ins 2704.06	RSA 400-A:15, I; RSA 415:26; RSA 420-J:7-b, X; RSA 420-J:12
Ins 2704.07	RSA 400-A:15, I; RSA 400-A:16, III; RSA 420-J:10-12