

SENATE BILL NO. 292

INTRODUCED BY M. ROSENDALE

1
2
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING WORKERS' COMPENSATION LAWS APPLYING TO
5 INSURANCE PAYMENT OF PRESCRIPTION DRUGS; AUTHORIZING A DRUG FORMULARY APPLYING TO
6 INJURED WORKERS; PROVIDING RULEMAKING AUTHORITY TO THE DEPARTMENT OF LABOR AND
7 INDUSTRY; REQUIRING THE DEPARTMENT OF LABOR AND INDUSTRY TO REPORT TO THE 66TH
8 LEGISLATURE; AMENDING SECTION 39-71-727, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE
9 AND AN APPLICABILITY DATE."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12
13 **Section 1.** Section 39-71-727, MCA, is amended to read:

14 **"39-71-727. Payment for prescription drugs -- drug formulary -- limitations -- rulemaking.** ~~(1) For~~
15 ~~payment of prescription drugs, an insurer is liable only for the purchase of generic-name drugs if the~~
16 ~~generic-name product is the therapeutic equivalent of the brand-name drug prescribed by the physician, unless~~
17 ~~the generic-name drug is unavailable. (1) (a) By July 1, 2016, the department shall establish rules implementing~~
18 an outpatient drug formulary that lists drugs that are payable for the treatment of compensable injuries and
19 occupational diseases.

20 (b) The department may establish rules for payment and reimbursement for compound prescription
21 drugs.

22 (c) The department may establish rules for maximum morphine equivalent dosage that are payable for
23 schedule II and schedule III narcotic pain medications within the formulary.

24 (d) (i) An insurer is not liable for the purchase of brand-name drugs if a generic-name product, which is
25 the therapeutic equivalent within the class, is available.

26 ~~(2)(ii)~~ (ii) If an injured worker prefers a brand-name drug, the worker may pay directly to the pharmacist the
27 difference in the reimbursement rate between the brand-name drug and the generic-name product, and the
28 pharmacist may bill the insurer only for the reimbursement rate of the generic-name drug.

29 (e) An insurer is not responsible for payment of prescription drugs that are not included in the formulary
30 unless the treating physician documents that a drug not included in the formulary is medically necessary to treat

1 an injured worker and the treating physician receives prior authorization by the insurer. HOWEVER, PRIOR
 2 AUTHORIZATION REQUIRED UNDER THIS SUBSECTION IS NOT REQUIRED FOR INPATIENT OR EMERGENCY TREATMENTS.

3 (f) The department shall establish rules implementing an independent medical review process for
 4 prescription drugs denied by an insurer pursuant to this subsection (1). A party aggrieved by the department's
 5 independent medical review process may, after mediation, file a petition with the workers' compensation court.

6 ~~————(3) The pharmacist may bill only for the cost of the generic-name product on a signed itemized billing,~~
 7 ~~except if purchase of the brand-name drug is allowed as provided in subsection (1).~~

8 ~~————(4) When billing for a brand-name drug, the pharmacist shall certify that the generic-name drug was~~
 9 ~~unavailable.~~

10 ~~(5)(2) The department shall establish a schedule of fees for prescription drugs. The schedule of fees~~
 11 ~~does not apply to an agreement between a preferred provider organization and an insurer.~~

12 ~~(6)(3) Except as provided in subsection (8) (4) or the drug formulary, a pharmacist may not dispense~~
 13 ~~MEDICATIONS MAY NOT BE DISPENSED FOR more than a 30-day supply at any one time.~~

14 ~~(7) For purposes of this section, the terms "brand name" and "generic name" have the meanings~~
 15 ~~provided in 37-7-502.~~

16 ~~(8)(4) An insurer may not require a worker receiving benefits under this chapter to obtain medications~~
 17 ~~from an out-of-state mail service pharmacy. However, an insurer may authorize up to a 90-day supply of~~
 18 ~~medications from an in-state mail service pharmacy.~~

19 ~~(9) The provisions of this section do not apply to an agreement between a preferred provider~~
 20 ~~organization and an insurer."~~

21
 22 **NEW SECTION. SECTION 2. DRUG FORMULARY -- ADVISORY COUNCIL -- REPORTING.** THE DEPARTMENT OF
 23 LABOR AND INDUSTRY SHALL REPORT TO THE 66TH LEGISLATURE THE FOLLOWING INFORMATION REGARDING
 24 IMPLEMENTATION OF [SECTION 1]:

25 (1) THE NUMBER OF PRESCRIPTION DRUGS DENIED BY THE INSURER; AND

26 (2) THE NUMBER OF PETITIONS PURSUANT TO [SECTION 1(1)(F)] FILED WITH THE WORKERS' COMPENSATION
 27 COURT.

28
 29 **NEW SECTION. Section 3. Effective date.** [This act] is effective July 1, 2016.

30

1 **NEW SECTION.** **Section 4. Applicability.** [This act] applies to injuries or occupational diseases that
2 occur on or after [the effective date of this act].
3 - END -