

Wisconsin's Pharmacy Open Access Laws

Over the past several years, WPhA has worked to establish state law which enables Wisconsin residents the opportunity to select their pharmacist provider. It has been a long, arduous and expensive process but we now have state law which requires all types of insured prescription drug programs to have open panel participation for pharmacy

providers in Wisconsin.

With the successful passage of SB 205 late last fall the final portion of the open access requirements was put in place. SB 205 required traditional indemnity insurance companies to maintain open access for pharmacy providers and prohibits exclusive agreements with mail order pharmacies (see 1991 WI Act 70 on page 7).

Wisconsin's pharmacy access statutes are the most comprehensive open access requirements when compared to those of other states. The Wisconsin open access requirements were passed as a series of pieces of legislation over the past several years. First, HMOs (Health Maintenance Organizations) were required to have open pharmacy panels. Then,

The HMO Open Panel statute was amended to also include PPOs (Preferred Provider Organizations) and LSHOs (Limited Service Health Organizations) Following the addition of PPOs and LSHOs to the HMO Open Panel Access Law, the open access laws were signed by the Governor and became 1989 Wisconsin Act 215 (reprinted on page 6).

1989 WISCONSIN ACT 215

AN ACT to renumber and amend 628.36 (2m) (a); to amend 628.36 (2m) (title), 628.36 (2m) (e) 1 and 628.36 (2m) (e) 2; and to create 628.36 (2m) (a) 2 and 3 and 628.36 (2m) (e) 4 of the statutes, relating to participation of pharmacists in limited service health organizations and preferred provider plans.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 628.36 (2m) (title) of the statutes is amended to read:

628.36 (2m) (title) PHARMACEUTICAL SERVICES.

SECTION 2. 628.36 (2m) (a) of the statutes is renumbered 628.36 (2m) (a) (intro.) and amended to read:

628.36 (2m) (a) (intro.) In this subsection, "health"

1. "Health maintenance organization" has the meaning given in s. 609.01 (2).

SECTION 3. 628.36 (2m) (a) 2 and 3 of the statutes are created to read:

628.36 (2m) (a) 2. "Limited service health organization" has the meaning given in s. 609.01 (3).

3. "Preferred provider plan" has the meaning given in s. 609.01 (4).

SECTION 4. 628.36 (2m) (e) 1 of the statutes is amended to read:

628.36 (2m) (e) 1. A health maintenance organization, limited

service health organization or preferred provider plan that provides coverage of pharmaceutical services when performed by one or more pharmacists who are selected by the organization or plan but who are not full-time salaried employees or partners of the organization or plan shall provide an annual period of at least 30 days during which any pharmacist registered under ch. 450 may elect to participate in the health maintenance organization, limited service health organization or preferred provider plan under its terms as a selected provider for at least one year.

SECTION 5. 628.36 (2m) (e) 2 of the statutes, as affected by 1989 Wisconsin Act 31, is amended to read:

628.36 (2m) (e) 2. Except as provided in subd. 3. subd. 1 applies to health maintenance organizations on and after May 10, 1984. Except as provided in subd. 4, subd. 1 applies to limited service health organizations and preferred provider plans on and after the effective date of this subdivision ... [revisor inserts date].

SECTION 6. 628.36 (2m) (e) 4 of the statutes is created to read:

628.36 (2m) (e) 4. If compliance with the requirements of subd. 1 during the period specified in subd. 2 would impair any provision of a contract between a limited service health organization or preferred provider plan and any other person, and if the contract was in existence prior to the effective date of this subdivision ... [revisor inserts date], then immediately after the expiration of all such contract provisions the limited service health organization or preferred provider plan shall comply with the requirements of subd. 1.

Pharmacists are encouraged to copy Act 70 and Act 215 and send them along with a request to participate in plans which may currently be excluding their participation.

Upon the Governor's signing of 1991 SB 205, that legislation became 1991 Wisconsin Act 70. Therefore, when taken together, the laws outlined in 1989 Wisconsin Act 215 and 1991 Wisconsin Act 70 compose the state's complete pharmacy open access laws. Both acts are reprinted here in their original form for pharmacists' use in communicating with employers or insurers which have established or are considering closed pharmacy panels. Pharmacists are encouraged to copy both acts and send them along with a request to participate in plans which may currently be excluding their participation.

EXCEPTIONS

There are three types of programs which are exempt

from the state's open panel requirements. Staff model HMOs (an HMO with its own pharmacy) is exempt by definition given in Act 215. Also, programs which are self-insured by an employer (where no insurance is involved; the employer pays claims as they are submitted by an employee or a third party administrator) are exempt. These self-insured programs are exempt because of a federal law, ERISA, which allows self-insured health programs to be exempt from state insurance regulation. The federal law, therefore, pre-empts the state pharmacy open access laws. The third type of program which is exempt from the state's open access requirements are union sponsored health programs. A federal law also allows union plans to be

exempt from state regulation.

For now, as much has been done as legislatively possible at the state level to provide patients the freedom to choose their pharmacy provider. Action must now be taken at the national level to remove the two federal pre-emptions.

Wisconsin pharmacists should take pride in having passed the broadest pharmacy open access laws of any state in the country. It was the organized efforts of pharmacists throughout the state which enabled this legislation to be enacted. ♦

1991 WISCONSIN ACT 70

AN ACT to amend 616.09 (1) (a) 2; and to create 40.51 (16) and 632.86 of the statutes, relating to health insurance coverage of pharmaceutical services.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows: SECTION 1. 40.51 (16) of the statutes is created to read:

40.51 (16) Every health care plan, except a health maintenance organization or a preferred provider plan, offered by the state under sub. (6) shall comply with s. 632.86.

SECTION 2. 616.09 (1) (a) 2 of the statutes is amended to read:

616.09 (1) (a) 2. Plans authorized under s. 616.06 are subject to s. 610.21, 1977 stats., s. 610.55, 1977 stats., s. 610.57, 1977 stats., and ss. 628.34 to 628.39, 1977 stats., to chs. 600, 601, 620, 625, 627 and 645, to ss. 632.72, 632.755 and 632.86 and 632.87 and to this subchapter except s. 616.08.

SECTION 3. 632.86 of the statutes is created to read:

632.86 Restrictions on pharmaceutical services. (1) In this section:

(a) "Disability insurance policy" has the meaning given in s. 632.895 (1) (a), except that the term does not include coverage under a health maintenance organization, as defined in s. 609.01 (2), a limited service health organization, as defined in s. 609.01 (3), a preferred provider plan, as defined in 609.01 (4), or a sickness care plan operated by a cooperative association organized under ss. 185.981 to 185.985.

(b) "Pharmaceutical mail order plan" means a plan under which prescribed drugs or devices are dispensed through the mail.

(c) "Prescribed drug or device" has the meaning given in s. 450.01 (18).

(2) No group or blanket disability insurance policy that provides coverage of prescribed drugs or devices through a pharmaceutical mail order plan may do any of the following:

(a) Exclude coverage, expressly or by implication, of any prescribed drug or device provided by a pharmacist or pharmacy selected by a covered individual if the pharmacist or pharmacy provides or agrees to provide prescribed drugs or devices under the terms of the policy and at the same cost to the insurer issuing the policy as a pharmaceutical mail order plan.

(b) Contain coverage, deductible or copayment provisions for prescribed drugs or devices provided by a pharmacist or pharmacy selected by a covered individual that are different from the coverage, deductible or copayment provisions for prescribed drugs or devices provided by a pharmaceutical mail order plan.

SECTION 4. Initial applicability. This act first applies to policies issued or renewed on the effective date of this SECTION.