

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
PARIS DIVISION

LINDA FREW, et al.,
Plaintiffs,

§
§
§
§
§
§
§

v.

ALBERT HAWKINS, et al.,
Defendants.

CIVIL ACTION NO. 3:93CV65
SENIOR JUDGE WILLIAM
WAYNE JUSTICE

CORRECTIVE ACTION ORDER:
PRESCRIPTION AND NON-PRESCRIPTION MEDICATIONS;
MEDICAL EQUIPMENT AND SUPPLIES

Decree References:

¶ 3: “Recipients are also entitled to all needed follow up health care services that are permitted by federal Medicaid law. 42 U.S.C. §1396d(r).

¶129: “...Defendants will implement an initiative to effectively inform pharmacists about EPSDT, and in particular about EPSDT’s coverage of items found in pharmacies...”

¶130: “...if pharmacists’ understanding of the program is unacceptable, Defendants will conduct an initiative to orally inform pharmacists about EPSDT’s coverage.”

Defendants have implemented a Preferred Drug List (PDL), as permitted by federal Medicaid law. 42 U.S.C. §1396r-8. Prior authorization is required if a class member is to receive a prescribed medicine that is not on the PDL. Defendants’ rules allow pharmacies to provide a 72-hour “emergency” allotment of a prescription. The purpose of the 72-hour “emergency” prescription is to ensure that class members are not deprived of medicine that they need while prior authorization is requested, particularly (but not only) on weekends. Further, the emergency” allotment provides time for a new prescription to be requested if the off-PDL medicine is not approved.

IT IS ORDERED:

- As to class members, Defendants' policy is: a pharmacy must provide a 72-hour emergency allotment of a medication that is not listed on the PDL if a denial is only because of lack of prior authorization and the pharmacist has made a reasonable attempt to contact the physician or, if it is a night, weekend, holiday, or the physician cannot be reached, the pharmacist has submitted the prescription as written and received an electronic denial solely due to lack of a prior authorization ("PA").
- Defendants have an automated system such that seven days a week/24 hours a day (except for the normal weekly scheduled system maintenance, which is about 5 hours/week at night), Medicaid pharmacy providers can submit a point-of-sale claim with an emergency override for any claim that has rejected due solely to lack of a prior authorization. The claim is typically adjudicated immediately and returned with a payable response and amount to be paid to the provider. Pharmacy providers are paid in full for the quantity submitted on the claim and receive a full dispensing expense. In other words, through the computer system of Defendants' contractor, when pharmacies submit a claim for a medication not listed on the PDL, they may submit a request through the computer system for an "emergency override" to obtain immediate electronic approval of a 72-hour emergency prescription. This is permitted if there is no prior approval to fill the entire non-PDL prescription as written and the physician is unavailable and/or unable to request prior approval.
- Currently, when a pharmacy submits a claim, it receives an electronic message from Defendants' contractor within a matter of seconds. The message either approves payment or explains the reason(s) for denial by use of denial codes. This message includes a maximum of 200 characters (letters, punctuation, spaces). Within 120 days, Defendants will ensure that this

message is changed as follows. When a non-PDL medication is denied solely because prior authorization has not been obtained, the message will instruct the pharmacy to the effect that the Dr. should call TX PA Call Center 1-877-728-3927 or R.Ph should submit 72hr Emergency Rx if Dr. not available. No later than three months after entry of this Order, Defendants will send a mailing to all pharmacies enrolled in Medicaid. The mailing will explain in clear terms the 72-hour emergency prescription policy, with emphasis on the requirement as it applies to children. It will also include useful information about the requirement, in a format and size that can be attached to pharmacy computer screens, to remind pharmacy staff about the requirement.

- No later than three months after entry of this Order, Defendants will work with the Texas Pharmacy Association to explain to TPA members the 72-hour emergency prescription policy, with emphasis on the policy as it applies to children.
- No later than six months after entry of this Order, Defendants will begin an analysis of their contracted pharmacies' claims history for emergency prescriptions. Within 12 months of the beginning of this analysis, Defendants will complete their analysis of all pharmacies enrolled in Medicaid. At their option, Defendants may rely on their Vendor Drug staff to complete the two analyses required in this paragraph. Initially, they will seek to identify those pharmacies that, despite processing a significant volume of Medicaid prescriptions in therapeutic classes subject to prior authorization, have processed no emergency prescriptions pursuant to the 72-hour policy. They will subsequently seek to identify those Medicaid pharmacies that fill a high volume of Medicaid prescriptions in therapeutic classes subject to prior authorization but that appear to have filled a lower than expected percentage of 72-hour prescriptions. Within two years of completion of the first analysis, Defendants will begin a second analysis for all pharmacies. The

second analysis will be finished within 12 months. At their option, Defendants may choose to prioritize their analysis in any reasonable manner.

- Defendants will provide intensive, targeted educational efforts to those pharmacies for which the data suggest a lack of knowledge of the 72-hour emergency prescriptions policy. In addition, Defendants will continue their educational efforts with respect to all Medicaid pharmacies, using means such as newsletters, fax notices to stakeholders, computer-based training, information on their public website, e-mail notifications, regional pharmacist visits, one-on-one education via the Pharmacy Resolutions Help Desk, as well as targeted follow-up with pharmacies that are the subject of complaints.
- Defendants will make available a Medicaid PDL subscription service, at no charge, that health care providers may use on the internet or download to hand held devices that they use at the point of care. The service will inform prescribers about all non-preferred medicines that require prior approval. Defendants will post information on their Vendor Drug website advising providers about the service and how to request it. Defendants expect that the service will be available by August 2007.
- Beginning no later than January 2008, Defendants will begin encouraging all Medicaid-enrolled pharmacies to also become Medicaid-enrolled providers of durable medical equipment (“DME”). The purpose of this effort is to facilitate class members’ receipt of DME normally found in pharmacies.
- Beginning in September 2007, each time a pharmacy signs a new contract, amended contract or renewed contract to be a Medicaid pharmacy, Defendants will provide information about the emergency prescription policies. They will also provide information about the scope of DME that is available in pharmacies for class members.

- By January 2008, Defendants will train staff at their ombudsman's office about the emergency prescription standards, what steps to take to immediately address class members' problems when pharmacies do not provide emergency medicines, and DME standards and common problems.
- Beginning no later than their September 2007 contract amendments, Defendants will - encourage STAR managed care organizations to train staff at their 24-hour nurse hotlines about the emergency prescription standards, what steps to take to immediately address class members' problems when pharmacies do not provide emergency medicines, and DME standards and common problems. The 24-hour nurse hotlines will attempt to respond immediately to problems with emergency medicines by means at their disposal, including explaining the rules to class members so that they understand their rights and, if need be, by offering to contact the pharmacy that is refusing to fill the prescription to explain the 72-hour and DME policies to the staff refusing to fill the prescription.
- When the two analyses are complete, counsel will confer to determine what, if any, further action is required. Counsel will begin to confer no later than 30 days following completion of the second analysis. ("completion"). If the parties agree, they will so report to the Court within 120 days of completion. If the parties cannot agree within 90 days of completion, the dispute will be resolved by the Court upon motion to be filed by either party. If the parties cannot agree, either party will file their motion within 30 days of the conclusion of discussions among counsel.