

STATE OF CALIFORNIA
DEPARTMENT OF MANAGED HEALTH CARE

June 20, 2006

The Honorable Don Perata
President Pro Tempore
California State Senate
State Capitol, Room 205
Sacramento, CA 95814

The Honorable Deborah Ortiz
Chair, Health Committee
California State Senate
State Capitol, Room 2191
Sacramento, CA 95814

The Honorable Fabian Nuñez
Speaker of the Assembly
California State Assembly
State Capitol, Room 219
Sacramento, CA 95814

The Honorable Wilma Chan
Chair, Health Committee
California State Assembly
State Capitol, Room 6005
Sacramento, CA 95814

The Honorable Jackie Speier
Chair, Banking, Finance and Insurance Committee
California State Senate
State Capitol, Room 2032
Sacramento, CA 95814

**RE: Annual Report on the Implementation of SB 842 (Stats. 2002, ch. 791)
Prescription Drug Standards (Updated)**

Dear Ladies and Gentlemen:

Pursuant to Health and Safety Code section 1342.7, by July 1 of each year, the Department of Managed Health Care must report to the Legislature on the ongoing implementation of SB 842, Prescription Drug Standards. SB 842 became operative on January 2, 2003. This is the third annual report, covering the period May 1, 2005, to April 30, 2006.

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Since the last reporting period, the Department has continued to refine the proposed regulations, which outline the Department's standards for reviewing a plan's request for approval of a proposed co-payment, deductible, limitation, or exclusion to its prescription drug benefits. The Department's activities since SB 842 was enacted are summarized below.

- On October 12, 2004, the Department scheduled an informal meeting with stakeholders, discussed the proposed regulations, and received their input.
- On December 3, 2004, the Department sent the draft regulations to the Advisory Committee members, pursuant to Health and Safety Code section 1347(d).
- On December 17, 2004, the Department posted a public notice announcing that the comment period for the proposed regulations was open and would close on January 31, 2005.
- On January 4, 2005, Director Lucinda Ehnes conducted a media teleconference with Senator Jackie Speier publicizing the new regulations that proposed to establish the most comprehensive standard in the nation for reviewing HMO exclusions of prescription drug coverage. The Department issued a press release advising of the public comment period.
- The Department held a public hearing on January 25, 2005, to receive comments on the proposed regulations.
- During the 30-day comment period, the Department received approximately 172 comments regarding the proposed regulations from 38 members of the public.
- On August 26, 2005, the Department posted the revised proposed regulations for a second comment period, which closed on September 26, 2005.
- During this 30-day comment period, the Department received approximately 85 comments regarding the proposed regulation from 13 members of the public, including consumers, pharmacy manufacturers, pharmacists, physicians, health plans, and industry associations.
- On October 17, 2005, the Department posted the revised proposed regulations for a third comment period, which closed on November 1, 2005.
- During this 15-day comment period, the Department received approximately 59 comments regarding the proposed regulation from 11 members of the public, including consumers, pharmacy manufacturers, pharmacists, health plans, and industry associations.

- On December 13, 2005, after making several revisions to address concerns raised in the public comments, the Department forwarded the final regulation package to OAL for approval.
- On February 6, 2006, OAL issued a notice advising that an additional comment period would be necessary before approval in order to meet the APA requirements, and provided a 120 days extension, of the initial deadline, to June 6, 2006, for delivery of the final rulemaking package for OAL approval.
- On March 17, 2006, the Department posted the revised proposed regulations for a fourth comment period which closed on April 6, 2005.
- During this 20-day comment period, the Department received approximately 46 comments regarding the proposed regulation from 10 members of the public.
- On May 1, 2006, the Department posted the revised proposed regulations for a fifth comment period which will closed on May 16, 2006. The Department forwarded the final regulation package to OAL for approval on May 24, 2006.

SB 842 requires that plans providing outpatient prescription drugs provide all medically necessary prescription drugs, except pursuant to an approved material modification (Health and Saf. Code §§ 1342.7, 1367.24). In implementing these statutes, the Department is mindful of the need to contain unnecessary costs to maximize the number of Californians who are able to afford health care coverage.

A review of Department records revealed the following actions taken during this reporting period:

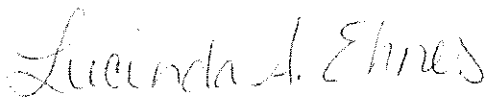
- The Department approved a plan's proposal to require enrollees to obtain self-injectable medications through the plan-contracted specialty mail-order pharmacy network. The plan initially filed the proposal as an Amendment, but the Department required the plan to withdraw the Amendment and re-file as a Notice of Material Modification, enabling the Department's closer scrutiny of accessibility and continuity of care. The Department approved the proposal after the plan demonstrated that the arrangements would improve access and continuity for self-injectable medications.
- The Department approved a plan's proposal to increase the co-payment for non-formulary prescription drugs after first requiring the plan to demonstrate: that the proposed co-payments did not exceed 50% of the actual cost for the prescription drug (to ensure the plan retained at least 50% of the risk for the prescription drug benefit); and that the proposed percentage co-payments did not exceed a maximum of \$150 per prescription for retail and \$300 for 3-month supply by mail order (to provide full and fair disclosure to

subscribers regarding their financial risk for prescription drugs, and to promote informed consumer decision-making by facilitating their ability to compare prescription drug benefit products).

- The Department approved an innovative benefit design that provided a greater than 10% savings on premium costs over the most popular HMO product. The approved benefit design included a \$400 deductible on brand name drugs which provided flexibility for the plan to reduce premium costs.

Please feel free to contact Sherrie Lowenstein, Legislative Coordinator/Senior Supervising Counsel, at (916) 322-5874 if you have any questions or require additional information.

Sincerely,



LUCINDA A. EHNES, J.D.
Director

WB:kh

cc: The Honorable Dick Ackerman, Minority Leader, California State Senate
The Honorable George Plescia, Minority Leader, California State Assembly
The Honorable Dave Cox, Vice Chair, Banking, Finance and Insurance Committee
The Honorable George Runner, Vice Chair, Health Committee
The Honorable Greg Aghazarian, Vice Chair, Health Committee
Gregory Schmidt, Secretary of the Senate
David Panush, Consultant, Office of Senator Don Perata
Sumi Sousa, Special Assistant, Office of Assemblyman Fabian Nunez
Tim Conaghan, Policy Consultant, Senate Republican Caucus
Brian Perkins, Staff Director, Senate Banking, Finance and Insurance Committee
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Kacy Hutchison, Deputy Legislative Secretary, Office of the Governor
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