



2021 ASSEMBLY BILL 718

November 17, 2021 - Introduced by Representatives KURTZ, SWEARINGEN, GOYKE, JAMES, PETRYK, SUMMERFIELD, ANDRACA, BALDEH, BEHNKE, BILLINGS, BOWEN, BRANDTJEN, CABRAL-GUEVARA, CALLAHAN, CONLEY, CONSIDINE, DITTRICH, DOYLE, DRAKE, DUCHOW, EDMING, EMERSON, GUNDRUM, HAYWOOD, HINTZ, KERKMAN, KITCHENS, KNODL, KRUG, MACCO, MAGNIFICI, B. MEYERS, MILROY, MOSES, MURSAU, L. MYERS, NEUBAUER, NOVAK, OHNSTAD, OLDENBURG, ORTIZ-VELEZ, PLUMER, POPE, RIEMER, J. RODRIGUEZ, ROZAR, SCHRAA, SHANKLAND, SHELTON, SKOWRONSKI, SNODGRASS, SNYDER, SPIROS, SPREITZER, THIESFELDT, TRANEL, VINING, VRUWINK, WICHGERS, SINICKI, STUBBS and TUSLER, cosponsored by Senators DARLING, MARKLEIN, ERPENBACH, BERNIER, BEWLEY, FEYEN, JACQUE, JOHNSON, NASS, PETROWSKI, PFAFF, RINGHAND, ROYS, SMITH, L. TAYLOR, WIRCH, WANGGAARD, COWLES and CARPENTER. Referred to Committee on Health.

- 1 **AN ACT to create** 628.34 (5m) of the statutes; **relating to:** prohibiting certain
2 practices relating to insurance coverage of clinician-administered drugs.

Analysis by the Legislative Reference Bureau

This bill prohibits certain practices relating to clinician-administered drugs under the state's insurance unfair marketing and trade practices law. The bill defines "clinician-administered drug" as an outpatient prescription drug, other than a vaccine, that, due to medical necessity, cannot reasonably be self-administered by the patient or an individual assisting the patient and is typically administered by an authorized health care provider in a physician's office, hospital outpatient department, or other clinical setting. Under the bill, an insurer offering a health benefit plan, a pharmacy benefit manager, or an agent of the insurer or pharmacy benefit manager may not do any of the following:

1. Refuse to authorize, approve, or pay a participating provider for providing a covered clinician-administered drug and related services to an enrollee, policyholder, or insured.

2. Condition, deny, restrict, refuse to authorize or approve, or reduce payment to a participating provider for a covered clinician-administered drug and related services when all criteria for medical necessity are met because the provider obtains the drug from an entity that is not selected by the plan. Also prohibited are health benefit plan designs that prevent participating providers from receiving reimbursement for a covered clinician-administered drug and any related service at an applicable rate as specified in the contract.

3. Impose coverage or benefit limitations, or require an enrollee, policyholder, or insured to pay an additional fee, higher copay or coinsurance, second copay or

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coinsurance, or penalty when obtaining a clinician-administered drug from an authorized health care provider or pharmacy.

4. Require an enrollee, policyholder, or insured to pay an additional fee, higher copay or coinsurance, second copay or coinsurance, or other form of a price increase for a clinician-administered drug when the drug is not dispensed by a pharmacy or acquired from an entity that is selected by the plan.

5. Interfere with an enrollee's, policyholder's, or insured's right to choose to obtain a clinician-administered drug from a participating provider or pharmacy of choice.

6. Limit or exclude coverage for a clinician-administered drug when not dispensed by a pharmacy or acquired from an entity selected by the plan when the drug would otherwise be covered.

7. Require a pharmacy to dispense a clinician-administered drug directly to an enrollee, policyholder, insured, or the insured's agent with the intention that the individual will transport the drug to a health care provider for administration.

8. Require or encourage the dispensing of a clinician-administered drug to an enrollee, policyholder, or insured in a manner that is inconsistent with the federal Drug Supply Chain Security Act.

9. Require that a clinician-administered drug be dispensed or administered to an enrollee, policyholder, or insured in the residence of the enrollee, policyholder, or insured or require the use of an infusion site external to the office or clinic of the enrollee's, policyholder's, or insured's provider.

Under the bill, a participating provider is a provider who is under contract with a defined network plan, preferred provider plan, or limited service health organization to provide health care services, items, or supplies to enrollees of the plan or organization or a clinic, hospital outpatient department, or pharmacy under the common ownership or control of the provider.

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

1 **SECTION 1.** 628.34 (5m) of the statutes is created to read:

2 628.34 (5m) CLINICIAN-ADMINISTERED DRUGS. (a) In this subsection:

3 1. "Clinician-administered drug" means an outpatient prescription drug, other
4 than a vaccine, that meets all of the following conditions:

5 a. Due to medical necessity as determined by the prescribing provider, the drug
6 cannot reasonably be self-administered by the patient to whom the drug is
7 prescribed or by an individual assisting the patient with the self-administration.

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1 b. Due to medical necessity as determined by the prescribing provider, the drug
2 is typically administered by a health care provider who is authorized under the laws
3 of this state, including when acting under the delegation and supervision of a
4 physician, to administer the drug and is typically administered in a physician's
5 office, hospital outpatient department, or other clinical setting.

6 2. "Health benefit plan" has the meaning given in s. 632.745 (11).

7 3. "Participating provider" means any of the following:

8 a. A provider that is under contract with a defined network plan, preferred
9 provider plan, or limited service health organization to provide health care services,
10 items, or supplies to enrollees of the plan or organization.

11 b. A clinic, hospital outpatient department, or pharmacy under the common
12 ownership or control of a provider described in subd. 3. a.

13 4. "Pharmacy benefit manager" has the meaning given in s. 632.865 (1) (c).

14 5. "Provider" has the meaning given in s. 609.01 (5m).

15 (b) No insurer offering a health benefit plan, pharmacy benefit manager, or
16 agent or affiliate of the insurer or pharmacy benefit manager may do any of the
17 following:

18 1. Refuse to authorize, approve, or pay a participating provider for providing
19 a covered clinician-administered drug and related services to an enrollee,
20 policyholder, or insured.

21 2. Condition, deny, restrict, refuse to authorize or approve, or reduce payment
22 to a participating provider for a covered clinician-administered drug and related
23 services to an enrollee, policyholder, or insured when all criteria for medical
24 necessity are met because the participating provider obtains the drug from an entity
25 that is not selected by the plan. Any health benefit plan design that prevents

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1 participating providers from receiving reimbursement for a covered
2 clinician-administered drug and any related service at an applicable rate as
3 specified in the contract is prohibited under this subdivision.

4 3. Impose coverage or benefit limitations, or require an enrollee, policyholder,
5 or insured to pay an additional fee, higher copay or coinsurance, second copay or
6 coinsurance, or penalty when obtaining a clinician-administered drug from a
7 participating provider authorized under the laws of this state to administer the drug
8 or a pharmacy.

9 4. Require an enrollee, policyholder, or insured to pay an additional fee, higher
10 copay or coinsurance, second copay or coinsurance, or other form of a price increase
11 for a clinician-administered drug when the drug is not dispensed by a pharmacy or
12 acquired from an entity selected by the plan.

13 5. Interfere with the right of an enrollee, policyholder, or insured to choose to
14 obtain a clinician-administered drug from the participating provider or pharmacy
15 of choice, including by inducement, steering, or offering financial or other incentives.

16 6. Limit or exclude coverage for a clinician-administered drug when not
17 dispensed by a pharmacy or acquired from an entity selected by the plan when the
18 drug would otherwise be covered.

19 7. Require a pharmacy to dispense a clinician-administered drug directly to an
20 enrollee, policyholder, or insured or agent of the insured with the intention that the
21 enrollee, policyholder, or insured or agent of the insured will transport the
22 medication to a health care provider for administration.

23 8. Require or encourage the dispensing of a clinician-administered drug to an
24 enrollee, policyholder, or insured in a manner that is inconsistent with the supply

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1 chain security controls and chain of distribution set by the federal drug supply chain
2 security act, 21 USC 360eee, et seq.

3 9. Require that a clinician-administered drug be dispensed or administered to
4 an enrollee, policyholder, or insured in the residence of the enrollee, policyholder, or
5 insured or require use of an infusion site external to the office, department, or clinic
6 of the provider of the enrollee, policyholder, or insured. Nothing in this subdivision
7 prohibits the insurer, pharmacy benefit manager, or agent of the insurer or
8 pharmacy benefit manager from offering the use of a home infusion pharmacy or
9 external infusion site.

10 (END)